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The Supreme Court of
THE UNITED STATES

OCTOBER TERM, 1915.

BERNARD B. SELLING, OTTO KIRCHNER, HENRY M. CAMPBELL, CLARENCE A. LIGHTNER and SIDNEY T. MILLER, a special committee appointed by the Association of the Bar of the City of Detroit,
Petitioners.

v.

GEORGE W. RADFORD,
Respondent.

State of Michigan, }
County of Wayne. } ss.

Henry P. Seaborg, being duly sworn deposes and says that he is an attorney in the offices of Bernard B. Selling, one of the above named Petitioners; that on the 26th day of May, 1916, he served a true copy of the annexed Petition, Motion, Notice and Acceptance, and also of Brief for Petitioners upon George W. Radford, the respondent in the above entitled cause by delivering the same to him personally at his office, 211 Hammond Building, Detroit, Wayne County, Michigan.

And further deponent says not.

Henry P. Seaborg.

Subscribed and sworn to before me this 26th day of May, 1916.

Thos. W. Thompson,
Notary Public, Wayne County, Michigan.

My commission expires April 3, 1920.

MOTION FOR LEAVE TO FILE PETITION, AND NOTICE.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

BERNARD B. SELLING, OTTO KIRCHNER, HENRY M. CAMPBELL, CLARENCE A. LIGHTNER and SIDNEY T. MILLER, a special committee appointed by the Association of the Bar of the City of Detroit,
Petitioners.

v.

GEORGE W. RADFORD,
Respondent.

Now comes Bernard B. Selling, Otto Kirchner, Henry M. Campbell, Clarence A. Lightner and Sidney T. Miller, a special committee appointed by the Association of the Bar of the City of Detroit, by John W. Davis, Solicitor General of the United States, and move this Honorable Court that they may be permitted to file the petition hereto annexed.

(Sgd.) Jno. W. Davis,
Solicitor General of the United States.

Dated May 26, 1916.

To George W. Radford, Detroit, Michigan:

You are hereby notified that the above named petitioners will on Monday, the 5th day of June, 1916, upon their veri-

fied petition, at the opening of the Court on that day or as soon thereafter as counsel can be heard, submit a motion a copy of which and of the petition aforesaid are herewith delivered to you, to the Supreme Court of the United States in the Court Room at the Capitol, in the City of Washington, D. C.

(Sgd.) Jno. W. Davis,
Solicitor General of the United States,
appearing for said Petitioners.

May 26, 1916.

The foregoing notice is hereby accepted and delivery of a copy of said petition and motion are hereby acknowledged.
May ...., 1916.

PETITION.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

BERNARD B. SELLING, OTTO KIRCHNER, HENRY M. CAMPBELL, CLARENCE A. LIGHTNER and SIDNEY T. MILLER, a special committee appointed by the Association of the Bar of the City of Detroit,
Petitioners.

v.

GEORGE W. RADFORD,
Respondent.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Bernard B. Selling, Otto Kirchner, Henry M. Campbell, Clarence A. Lightner and Sidney T. Miller, a Special Committee appointed by the Association of the Bar of the City of Detroit in the State of Michigan, to file this petition for the purpose of having stricken from the roll of

this Court the name of one George W. Radford who resides in the City of Detroit in the State of Michigan, respectfully represents as follows:

(1) George W. Radford residing in the City of Detroit, Wayne County, Michigan, was admitted to practice in the Supreme Court of Michigan, on the 15th day of June, 1876.

(2) On March 18, 1886 the said George W. Radford, at that time having been an attorney and counselor for three years thereto preceding in the Superme Court of the State to which he belonged, and his private and professional character appearing to be fair, was admitted to the Bar of the Supreme Court of the United States on the motion of C. I. Walker of the City of Detroit, Michigan; and the said George W. Radford then and there signed the roll and took the proper oath.

(3) Some time after the admission of the said George W. Radford to practice in the Supreme Court of Michigan and to practice in the Supreme Court of the United States, the private and professional character of the said George W. Radford ceased to appear to be fair; and on June 3, 1909, a petition was filed in the Circuit Court for the County of Wayne in the State of Michigan in behalf of the Detroit Bar Association (since reincorporated under the name of the Association of the Bar of the City of Detroit) reciting certain acts of misconduct on the part of the said George W. Radford and praying that the name of the said George W. Radford be stricken from the roll of attorneys, and that he be disbarred from practice. The acts of misconduct charged related largely to misconduct of the said Radford in his relation with his clients and with the courts of whose bar he was a member. The said George W. Radford first demurred and then answered to said petition for disbarment; voluminous proofs were taken, and after due consideration by three of the Judges of the Circuit Court for the County of Wayne, in the State of Michigan, an opinion was handed down reading as follows:

OPINION OF THE COURT.

STATE OF MICHIGAN—In the Circuit Court for the County of Wayne.

In the Matter of GEORGE W. RADFORD.	Miscellaneous. File No. 211.

"On June 4, 1909, the Executive Committee of the Detroit Bar Association filed with the Circuit Judges of Wayne County a detailed report concerning the alleged non-professional conduct of the respondent, George W. Radford, an attorney-at-law, practicing at the bar of this Court. The report referred to contained the recommendation that disbarment proceedings be instituted. As a result, upon September 4, 1909, friends of the Court who had been appointed for that purpose, filed detailed charges of the specification against respondent, wherein, with great particularity and under numerous divisions, he was charged with gross unprofessional conduct. In general, the charges referred to his actions in connection with the Chesebrough estate, with the Oxnard estate, the Dean litigation, so-called, and the Meyers litigation. In view of the conclusion reached by the Court, it becomes unnecessary to analyze and discuss in detail the respondent's connection in all these matters; this because, in the opinion of the Court, his conduct in connection with the Oxnard estate is alone ample warrant for the institution of these proceedings.

"For years George W. Radford has been a very prominent and successful lawyer in the City of Detroit. In January, 1900, by the Probate Court of Wayne County, he was appointed and qualified as Executor of the Estate of John E. Oxnard, an estate involving several thousand dollars. In March of 1908, no report of his doings ever having been filed, he was ordered to file a report and inventory. After repeated delays and considerable procrastination, on September 2nd, this was finally done. This report, his subsequent examination concerning it and his alleged explanations, constitute the basis for the conclusion we have reach-

ed. As a skillful lawyer, he knew the law and the duty of an executor relative to filing an inventory and filing a report. No satisfactory explanation has yet been offered as to why, covering a period of eight years, this was never done by one who knew it was his duty so to do.

"Repeatedly since the first report was called for, he has disobeyed the orders of the Probate Court made in connection with this Estate. There was delay after delay in filing the report; there were delays in his appearance after he had been ordered before the Court. When the Court ordered a bond filed for the protection of the Estate, he declined to comply with this order; and when at the conclusion of a detailed examination the Court found there was due from him to the Estate of sum of $21,611.34, he not only neglected and failed to comply with the order of the Court relative to paying this sum into proper hands, but he has still neglected so to do. No appeal was ever taken from this order, and it is now the final determination of the Probate Court. It is unnecessary to consider whether under Section 11,610 of the Compiled Laws, this conduct amounts to an embezzlement. It is sufficient that an attorney learned in the law and in the ethics and proprieties of his profession should evidence such disregard for a court of competent jurisdiction as this conduct shows.

"The methods he employed in handling this estate lead to the irresistible conclusion that his entire conduct was disgracefully dishonest. After he had been executor for about two years, he put the Estate bank account in his own name, and from that day to the present drew checks against this account for any purpose he saw fit, either for his personal uses or for the benefit of the Estate, with no record kept anywhere as to when a check was for his use and when it was for the Estate's, so that confessedly it was impossible for anyone at any time to ascertain anything concerning the affairs of the Estate. He kept no books of this Estate in which anything could be discovered, and such property as he now claims to have purchased for the benefit of the Estate, he took absolutely in his own name. When brought into Court and compelled to explain his doings, then for

the first time did he claim that the property No. 171 Fort street, West, the title to which for years stood in the name of George W. Radford, in truth and fact belonged to the Oxnard Estate. On this same property he borrowed $4,400, executing a note and mortgage in his name individually. The proceeds of this loan he deposited in his own bank account, and the rents from this property as collected all went to the same account. Until it was disclosed at the hearing in the Probate Court years later that he held this property for the Oxnard Estate, no one ever knew it and nothing indicated it. The same is true of his alleged purchase for the benefit of the Estate of the stock of the newspaper now known as the Detroit Times. For years that stock had stood in the name of George W. Radford individually. He was the attorney representing the two Chesebrough Estates, and now claims that as Trustee of the Oxnard Estate, he bought all the claims against the Chesebrough Estate, this being his method of accounting for a large sum of money. He also at the hearing in the Probate Court disclosed the claim that certain property on Clairemont and Woodward avenue, the title to which stood in his own name, was in reality the property of the Oxnard Estate, although he borrowed ten thousand dollars to assist in making that purchase, executing his own note and mortgage for this money, and has from the beginning collected and kept the rents. His account as finally filed after repeated efforts to bring about this condition, is vague and uncertain. His claims are most unreasonable and improper, and his claims, as well as the account, have changed in material matters from time to time as the occasion made such change appear necessary. His method of handling this estate is explainable only upon one of two theories, either he had framed a design in his own mind to appropriate practically the entire estate to his own use, or he expected to do what apparently he is now trying to do, charge to the estate his unfortunate investments and to himself his more successful ones.

"For an ignorant person, or one unskilled in business to have done as he did, might be explained, though never justified. When such a course of conduct has been carried on, however, by a man of experience, learning and brilliancy,

it cannot be explained in any way consistent with honest motives.

"Under such circumstances, what is the duty of the Court? It requires no citation of authorities to demonstrate the full and complete power the Courts of this State have over their sworn officers; and when an attorney who is a sworn officer of the Court has so conducted himself as to reflect discredit and disgrace upon his profession and to induce the public to lose confidence in his profession, there is no room in a court of justice for further contamination from such a source. The practice of the law is a most honorable profession. While it requires skill and learning, it requires, perhaps more than any other profession, honesty and integrity. It is essential to the administration of Justice that the public be inspired with confidence in the practicing attorneys with whom they come in contact and of whose doings they are in general quite familiar. That confidence would be entirely lost, not alone in our profession but in our courts, if conduct as dishonest and reprehensible as that disclosed by this record were permitted to go unrebuked. It follows from these observations that we have reached the conclusion that George W. Radford has disgraced his profession, and has been guilty of conduct which shows conclusively that he is not to be trusted, and is not a fit person to be permitted to continue that practice of law. An order may be entered, therefore, forever disbarring him from practice.

(Signed) Henry A. Mandell,
J. O. Murfin,
Morse Rohnert,
Circuit Judges."

(4) On August 1, 1910 (as of July 21, 1910), a formal order striking the name of George W. Radford from the roll of Attorneys and forever disbarring him from practicing as an attorney and counselor-at-law or solicitor in chancery in any of the Courts of the State of Michigan, was entered, which order striking his name from the rolls and of disbarment appears in full in the opinion (hereinafter referred to) of the Supreme Court of Michigan in the 168th Volume of the Michigan Reports on pages 482, et.

seq., and a copy of which is attached as an appendix hereto.

(5) Thereupon by Writ of Certiorari the said George W. Radford reviewed in the Supreme Court of the State of Michigan the proceedings leading up to his disbarment in the Wayne Circuit Court, and after due consideration had by the Supreme Court of Michigan, that tribunal on the 10th day of February, 1912, filed an opinion sustaining the order striking the name of the said Radford from the rolls and forever disbarring him from practice in the Courts, of the State of Michigan, which opinion is officially reported in the 168th Volume of Michigan Reports at page 474 under the title of "In Re: Radford" and which opinion recites the findings of the Lower Court and the order of disbarment based thereon and proofs thereof, a copy of the opinion and the order of the Supreme Court thereon being hereto attached as an appendix hereto.

(6) The effect of the order of the Circuit Court for the County of Wayne and of the opinion and order of the Supreme Court of Michigan affirming the order of the Lower Court is a judicial finding that said George W. Radford acted in bad faith with relation to dealings in trust funds, and was guilty of a studied purpose and design to exploit the assets of the Oxnard Estate in his own interest and not to preserve the estate for the purposes named in the will.

(7) Said George W. Radford has never been reinstated in the Courts of the State of Michigan (although he has made effort to be so reinstated), but he continues to practice law in the City of Detroit claiming the right to do so and to make charges for services to clients because he is a member of the Bar of the Supreme Court of the United States and of other federal tribunals.

(8) It appears to the Association of the Bar of the City of Detroit, in whose behalf your petitioners file this petition, that it is a public scandal that a person who has been disbarred from practice in the Courts of the State in which he resides and whose admission to the Bar of this Honorable Court is based upon his right to practice in the Supreme Court of his own State and whose private and professional

character no longer appears to be fair, should be able to hold himself out as an attorney and counselor-at-law and to base his right so to do upon his admission to practice in this and other federal courts.

(9) Your petitioners being without other remedy in the premises therefore pray that an order be entered by this Court requiring the said George W. Radford to appear and answer make to this petition, paragraph by paragraph, and show cause, if any there be, why his name should not be stricken from the roll of this Court. May your petitioners have such other and further relief in the premises as is consistent with equity and good conscience.

(Sgd.) Bernard B. Selling.
(Sgd.) Otto Kirchner.
(Sgd.) Henry M. Campbell.
(Sgd.) Clarence A. Lightner.
(Sgd.) Sidney T. Miller.

(Sgd.) Jno. W. Davis,
Solicitor General of the United States for said petitioners.

State of Michigan, }
County of Wayne. } ss.

Bernard B. Selling, Otto Kirchner, Henry M. Campbell, Clarence A. Lightner and Sidney T. Miller, a special committee of the Association of the Bar of the City of Detroit, duly appointed by the executive committee thereof, being duly sworn depose and say that they have read the foregoing petition by them duly signed; that the allegations thereof are true as they verily believe.

(Sgd.) Bernard B. Selling.
(Sgd.) Otto Kirchner.
(Sgd.) Henry M. Campbell.
(Sgd.) Clarence A. Lightner.
(Sgd.) Sidney T. Miller.

Subscribed and sworn to before me, this 19th day of May, 1916.

Henry P. Seaborg,
Notary Public, Wayne County, Michigan.

My commission expires July 15, 1919.

SUPREME COURT.

In Re GEORGE W. RADFORD. } Before: Moore, C. J., Steere, Brooke, Blair and Stone, JJ.

Stone, J. This is a proceeding for the disbarment of George W. Radford who for many years has been a member of the bar in the Courts of this state. The proceeding was taken at the instance, and on the recommendation of the Detroit Bar Association, and has been conducted under the direction of the circuit court for the County of Wayne. That court appointed two members of the bar as Friends of the Court to make, prefer, present and prosecute charges against Mr. Radford, hereinafter called the respondent.

The petition of the Friends of the Court is very lengthy, and, together with the exhibits attached thereto, covers more than one hundred pages of the printed record. Its great length renders it inexpedient that it be set forth in full here. It is very explicit and full in its charges and specifications, and was duly verified upon information and belief. We have set forth the specifications which we deem material, as follows:

A. He wilfully and knowingly and unlawfully failed and neglected to file in the Probate Court for the County of Wayne, within the time required by law and by the conditions of his bond as such executor and by an order duly and lawfully made by said Probate Court, any account, or inventory, so-called, of the estate real or personal belonging to the estate of the said John E. Oxnard, deceased, which, of great value, had within that time come into his, said George W. Radford's possession as such executor; and he wilfully and knowingly and unlawfully so continued in his said failure and neglect for eight years after he had been appointed and qualified as such executor, as is hereinabove, in paragraph numbered third hereof, also set forth.

B. He wilfully and knowingly and unlawfully failed and neglected to render to said Probate Court, within the time

required by law and by the conditions of his bond as such executor and by an order duly and lawfully made by said Probate Court, any account of his administration of the estate of the said John E. Oxnard, deceased, although during that time he had, as such executor, come into the possession of large amounts of property, both real and personal, belonging to said estate, and had made large disbursements thereof, and he wilfully, knowingly and unlawfully so continued in his said failure and neglect for eight years after he had been appointed and had qualified as such executor, as is hereinabove, in paragraph numbered third hereof, also set forth.

C. He wilfully and knowingly and unlawfully and contemptuously, and without any good or lawful excuse, violated and disobeyed the lawful orders of the Probate Court of the County of Wayne, duly made and entered by and in said Probate Court the 10th day of March, A. D. 1908, and the 26th day of May, A. D. 1908, hereinabove referred to, and of which orders he had due notice, ordering and requiring him, within the times in such orders stated, to file in said court an account, or inventory, of said estate and to render to said Probate Court his account as such executor and an account of his receipts and disbursements as such executor; although, when such orders were made, he had, as such executor, come into possession and was then in possession of large amounts of property, both real and personal, belonging to said estate and had made large disbursements therefrom; and, although a warrant was, on the 22nd day of July, A. D. 1908, issued by and out of said Probate Court for his arrest and imprisonment for failure to obey, perform and comply with the said order of the 26th day of May, A. D. 1908, he knowingly and wilfully and unlawfully and contemptuously, and without any good or lawful excuse, filed no inventory or account of such estate and rendered no account of his receipts or disbursements as such executor until the second day of September, A. D. 1908, and after he had been removed from his office as such executor, as is hereinabove, in paragraph numbered third hereof, also set forth, and he, by his actions, was and is guilty of wilful contempt of said Probate Court.

E. He has wilfully and knowingly and unlawfully and contemptuously disobeyed and violated a lawful order of the Probate Court of the County of Wayne, duly and legally made and entered by and in said Probate Court the 15th day of May, A. D. 1909, and hereinabove referred to, and another lawful order of said Probate Court duly made and entered by and in said Probate Court the 14th day of July, A. D. 1909, and also hereinabove referred to, and from neither of which orders has any appeal been taken, or claimed, or noticed, and has wilfully and knowingly and unlawfully failed, neglected and refused and so continues to so neglect and refuse to pay to Elizabeth R. Oxnard, and to the Security Trust Company of Detroit, Michigan, and to the County Treasurer of Wayne County, the persons in such orders named, or to any of such persons, or to any one on behalf of such persons, or on behalf of any of them, the sums of money or any part of the sums of money by said Probate Court and in and by such orders then found due to such persons respectively from said George W. Radford as such executor as aforesaid, and which said George W. Radford was by said Probate Court and in and by such orders then and there ordered to pay to such persons; and he, the said George W. Radford, has wilfully and knowingly and unlawfully neglected and refused and so continues to so neglect and refuse to turn over to said Emmet A. Perry, administrator *de bonis non* with the will annexed of said estate, and in such order of the 15th day of May, A. D. 1909, mentioned, the uncollected assets stated in said George W. Radford's said account, in "Exhibit C" thereof, or any part thereof, which uncollected assets the said George W. Radford was by said Probate Court and in and by said last mentioned order ordered to so turn over to said Emmett A. Perry, as is hereinabove, in paragraph numbered fourth hereof, also set forth.

J. He wilfully and knowingly and unlawfully, in and by his testimony given in said Probate Court on the examination of his said account as such executor as aforesaid, sought to deceive and mislead said probate court and to deceive and mislead and cheat and defraud the persons interested in said Estate, and in the insurance moneys, so-called, herein-

above mentioned, by knowingly and intentionally charging to the said estate and claiming credits to himself, as such executor and trustee aforesaid, for certain practically worthless investments which he claimed to have made from and out of the funds of said estate and from and out of said insurance moneys and for and on behalf of said estate and for and on behalf of the persons interested in said insurance moneys, so-called, which said investments, as he, the said George W. Radford, then and there well knew, he did not lawfully make from or out of said funds or said insurance moneys, and did not make for or on behalf of said estate, or for or on behalf of the persons interested in said insurance moneys, and for which investments he was entitled to no credit as such executor or trustee, all as he, the said George W. Radford, then and there, when he gave his testimony aforesaid, well knew, as is hereinabove, in paragraph numbered eleventh hereof, also set forth.

K. If he, as such executor and trustee of and under the said last will and testament of John E. Oxnard, deceased, made from and out of the funds of said estate or from and out of the said insurance moneys, so-called, and for and on behalf of said estate or for and on behalf of the persons interested in said insurance moneys, so-called, any of the investments hereinabove, in paragraph numbered eleventh hereof, mentioned and which he claimed in his said testimony given in said Probate Court, on the examination of said account as such executor, that he did so make, as is hereinabove, in paragraph numbered eleventh hereof, set forth, then he, the said George W. Radford, wilfully and knowingly and fraudulently and unlawfully sought to deceive and mislead said Probate Court, and to deceive and mislead and cheat and defraud the said estate of John E. Oxnard, deceased, and the persons interested therein and the persons interested in said insurance moneys, so-called, when he failed and neglected to state in his said account as such executor the investments so made, and when he failed and neglected to credit said estate in such account, or otherwise, with said investments and with the moneys that he received on account thereof, and when he failed and neglected to credit the persons interested in said insurance moneys with such

investments and with the moneys received on account thereof, as hereinabove, in paragraph numbered eleventh hereof, set forth.

L. He has wilfully and knowingly and unlawfully and fraudulently, and with intent to defraud the said estate and to cheat and defraud the persons interested in the funds and assets thereof, misappropriated and converted and applied to his own use a large sum of money, to-wit: The sum of twenty-one thousand six hundred and eleven dollars and thirty-four cents ($21,611.34), which was received by him and which came into the hands and possession and control of him, the said George W. Radford, as the executor of the last will and testament of the said John E. Oxnard, deceased, and which was a part of the funds and assets of said estate, as is also hereinabove set forth.

M. He, as such executor, knowingly received large sums of money belonging to the funds and assets of said estate for which he wilfully and knowingly and fraudulently neglected and refused to render any account, as by the said Probate Court he was ordered and required to do.

N. He knowingly and wilfully and fraudulently omitted from his said inventory of said estate, so filed in said Probate Court as aforesaid, property which came into his possession as such executor.

O. He knowingly and wilfully and fraudulently charged and stated in his account as such executor as disbursements large sums of money which, as he well knew he did not lawfully disburse as such executor.

P. He was by the Honorable Edgar O. Durfee, Judge of Probate of the County of Wayne, lawfully appointed executor of and under the last will and testament of John E. Oxnard, deceased, as aforesaid, and as such executor collected goods, chattels, money and effects of the said deceased of great value, as above set forth, and still has such goods, chattels, money and effects in his hands, possession and control, and he wilfully and knowingly appropriated the same to his own use, and he has been, to-wit: by an order entered by and in said Probate Court for the County of Wayne on the 15th day of May, A. D. 1909, and hereinbefore referred to and a copy

of which is hereto atached and marked "Exhibit I," ordered by the said Judge of Probate forthwith to deliver to his successor in trust and to the persons lawfully entitled thereto, and in such order mentioned all the goods, chattels, money and effects of the deceased in his, the said George W. Radford's hands, and he, the said George W. Radford, has wilfully omitted, neglected and refused for sixty days to obey said order and, although sixty days have elapsed since said order was made, he still neglects and refuses to deliver said goods, chattels, money and effects of the said deceased as he was and is in and by said order commanded, and he, the said George W. Radford, has thereby, and by his said neglect and refusal, committed the crime of embezzlement.

On the filing of this petition an order to show cause directed to the respondent was duly signed and entered. Thereafter, on the 9th day of September, 1909, copies of the petition, charges and specifications, and the order to show cause entered thereon were duly served upon the respondent personally; and on September 14, 1909, the respondent, through his attorney, filed herein and served upon the Friends of the Court general and special demurrers to the petition. We shall have occasion to refer to these demurrers; but, as the same points there involved are discussed by respondent's counsel upon the final hearing, we do not deem it necessary to insert the demurrers here at length.

On September 25, 1909, the Court overruled the demurrers and ordered the respondent to file and serve his answer within ten days. Thereafter, respondent applied to this court for a writ of certiorari to review the order overruling his demurrers to the petition, which application was denied by this Court.

In re Radford, 159 Mich., 91.

Afterwards, and on December 23, 1909, the respondent's answer was filed and served. This answer denies the material allegations of deceit, fraud and malpractice charged in the petition.

On March 13, 1910, the taking of testimony on the issue joined on the petition and answer was begun before one of the Circuit Judges. At the conclusion of the testimony offered by the petitioners, the respondent moved to dismiss the proceedings, for numerous reasons, among others, that the evidence did not support the allegations of the petition, and the respondent at first declined to offer any testimony. Later the respondent offered testimony which was received, the taking of which occupied many days, beginning June 16th and ending June 27, 1910.

The case was argued and submitted before three of the Circuit Judges, and time was given to file briefs.

On July 21, 1910, after filing an opinion, certain findings were entered in the journal of the court and a formal judgment of disbarment was entered. These findings and judgment were as follows:

"STATE OF MICHIGAN—In the Circuit Court for the County of Wayne.

At a session of said Court continued and held at the Court House in the City of Detroit on the twenty-first day of July, A. D. 1910.

Present: Hon. Morse Rohnert, Hon. Henry A. Mandell and Hon. James O. Murfin, Circuit Judges.

In the Matter of
GEORGE RADFORD,
An Attorney-at-Law.
} Misc. No. 211.

"This matter coming on to be heard in open court on the testimony in support of the petition herein offered by the Friends of the Court and the testimony offered by the respondent and the testimony of the Friends of the Court in rebuttal, and the matter having been duly argued by counsel for the respective parties, and the court being fully advised in the premises and after due consideration having been given to the matter, and it appearing to the court from the evidence taken herein that George W. Radford, an attorney-at-law, has been guilty of the charges of unprofes-

sional conduct made against him and it appearing from the evidence, the court now here finds that the said Radford wilfully, knowingly and unlawfully failed and neglected to file in the Probate Court for the County of Wayne within the time required by law and the conditions of his bond as executor of the will of John E. Oxnard, deceased, and by orders duly and lawfully made by the said Probate Court any account or inventory of the estate, real or personal, belonging to the said Oxnard, which had come into his, said George W. Radford's possession as executor, and that he, said Radford, wilfully, knowingly and unlawfully continued in such failure and neglect for eight years after he had been appointed and qualified as such executor; that said George W. Radford wilfully, knowingly and unlawfully failed and neglected to render to said Probate Court within the time required by law and by the condition of his bond as such executor and by the lawful orders of said Probate Court any account of his administration of the Estate of John E. Oxnard, deceased, and that during the time of such failure and neglect there had come into the possession of said George W. Radford large amounts of property, both real and personal, belonging to said estate; that said Radford had made large disbursements from the funds of said estate and that said George W. Radford wilfully, knowingly, perversely and unlawfully continued in his said failure and neglect to render accounts of his administration for the period of eight years after he had been appointed and had qualified as such executor; that he has wilfully, knowingly and contemptuously without any good or lawful excuse, violated and disobeyed the lawful orders of the Probate Court for the County of Wayne requiring him, said George W. Radford, to file in the said Probate Court accounts of his administration and of an inventory of the assets and property of the estate of John E. Oxnard, deceased, the said George W. Radford has knowingly, wilfully and perversely disobeyed and violated the said lawful order of the Probate Court for the County of Wayne made and entered in said Court on the 17th day of November, 1908, requiring that he, said Radford, file his bond as trustee under the last will and testament of the said John E. Oxnard, deceased, and that at the time of such failure to file such bond, he,

said Radford, was in possession of large amounts of property which he was holding as trustee under said will; that the said Radford knew and had personal knowledge of the requirements of the provisions of said order requiring him to file a bond as such trustee, and that he wilfully, knowingly and perversely continued and still continues to retain possession of said trust property under said will; that said George W. Radford wilfully, knowingly and unlawfully disobeyed the lawful order of the Probate Court for the County of Wayne duly and legally entered by and in said Probate Court on the 15th day of May, 1909, and another lawful order of said Probate Court on the 14th day of July, 1909, requiring the said Radford to turn over forthwith and pay over to one Elizabeth R. Oxnard the sum of $5,537.16, being the balance due from said George W. Radford on the said 15th day of May, 1909, to said Elizabeth R. Oxnard, as executor of the will of John E. Oxnard, deceased, and to forthwith turn over to the Security Trust Company, of Detroit, Michigan, successor or trustee of the estate of John E. Oxnard, deceased, the sum of $15,904.19 with interest thereon from said 15th day of May, 1909, as required by said order of the Probate Court of July 14, 1909, and that said failure to pay said sums of money, respectively, still continues, and that said George Radford has not to the date hereof paid the same to the said several parties, nor has he paid any part thereof; that said orders of the Probate Court were not appealed from and that no good and sufficient reason has been given by said Radford why said sums of money have not heretofore been paid to their rightful and lawful owners; that the said George W. Radford has wilfully, fraudulently and unlawfully with intent to defraud the estate of the said John E. Oxnard, deceased, and to cheat and defraud the persons interested in the funds and assets thereof, misappropriated and converted and applied to his own use, to-wit, said George W. Radford's use large sums of money, to-wit, $20,000.00 and upwards, which was received by him and which came into his possession and control as the executor of the last will and testament of the said estate of John E. Oxnard, deceased; that he, the said George W. Radford, did wilfully, knowingly and contemptuously in and by his sworn testi-

mony given in the said Probate Court for the County of Wayne on the occasion of the examination of his said account as executor of the will of said John E. Oxnard, deceased, seek to deceive and mislead and cheat and defraud the persons interested in said estate and in certain moneys then and theretofore in the hands of said Radford known and called 'insurance moneys,' which were and are the proceeds of certain insurance policies on the life of said John E. Oxnard, deceased, by knowingly, intentionally, falsely and fraudulently charging to the estate of said John E. Oxnard, deceased, and to the insurance moneys, so-called, and claiming credit to himself as such executor and as trustee certain practically worthless investments, to-wit, investments in real estate in the city of Detroit, known as 171 Fort Street West, and certain other real estate situate on the northwest corner of Clairmont and Woodward avenues in the City of Detroit, and divers and sundry other investments, all of which said alleged investments were in the name of said George W. Radford, individually, and which said alleged investments he claimed to have made from and out of the funds of the estate of John E. Oxnard, deceased, and from and out of said insurance moneys and for and on behalf of said estate and for and on behalf of the persons interested in said insurance moneys, and all of which said investments as he, the said George W. Radford, then and there well knew he did not make and from and out of said funds or said insurance moneys, and did not make for and on behalf of said estate, or for and on behalf of the persons interested in said insurance moneys and for which investments he was entitled to no credit as executor and trustee as he, the said George W. Radford, then and there when he gave his testimony as aforesaid well knew; the said George W. Radford as an attorney-at-law and as an individual in connection with his dealings with the estates of Frances E. and Alfred Chesebrough and with one George L. Chesebrough, the administrator of said estate, has been guilty of unlawful, immoral and unprofessional conduct in that, after having caused the legal title of the real estate in the City of Detroit known as 171 Fort Street, West, to be taken in his name for the benefit and advantage and as trustee of the said George L. Chesebrough and others, such title being taken

with the knowledge and consent of the said George L. Chesebrough, he, said George W. Radford, did thereafter assert and claim absolute ownership in himself of said real estate and did deny, dispute and repudiate the interest and estate of George L. Chesebrough in and to said real estate and the right of the said George L. Chesebrough to an account, and in that he, the said George W. Radford, although in possession of certain moneys belonging to the Estate of said Frances E. Chesebrough and said Alfred Chesebrough, which he, said Radford, claimed to have disbursed from time to time, and although he, said Radford, came into possession and received large sums of money as the proceeds of a certain mortgage executed by said Radford in his name on said real estate last above mentioned, and of large sums of money as the rents of said real estate No. 171 Fort Street, West, Detroit, and certain other large sums of money as the proceeds of the sale of two certain lots or parcels of real estate at one time belonging to the estate of Frances E. Chesebrough, and located on Kirby avenue in the said City of Detroit, he, said George W. Radford, wilfully, perversely, unlawfully, fraudulently and deceitfully omitted, neglected and refused to render to the said George L. Chesebrough an accounting or an account of said trust and the said George W. Radford was repeatedly requested to furnish said accounting or account by the said George L. Chesebrough and his agents and representatives; that in other respects and particulars, as well as for the reasons stated in the findings aforesaid, said George W. Radford has been and is guilty of immoralties which utterly unfit him for the faithful discharge of the duties of an attorney to his client and of the court in which he may practice, and the court doth hereby find that the character of the said George W. Radford is such as shall no longer be approved by this Court, or any other court, and is such that we, or the public cannot safely rely upon his, said George W. Radford's honor and integrity.

Due consideration having been given to the aforesaid findings, it is Ordered and the Court doth hereby Order, That the license of said George W. Radford to practice as an attorney and counselor-at-law and solicitor in chancery in all the Courts of this State be, and the same is hereby revoked and cancelled, and that the name of the said George W. Rad-

ford be, and the same is hereby stricken from the roll of attorneys of this Court, and that the said George W. Radford be and is hereby removed from his office and offices as an attorney and counselor-at-law and solicitor in chancery, and that the said George W. Radford be and he is hereby forever disbarred from practicing as an attorney and counselor-at-law and solicitor in chancery in any of the courts of this state."

The respondent then applied to this Court for a Writ of Certiorari to review the proceedings and judgment, which Writ was granted.

In his petition for such Writ respondent alleges errors as follows:

"(a) In overruling your petitioner's said demurrer, and separately erred in overruling each and every ground thereof.

"(b) In not requiring each witness to examine his or her testimony and to correct and sign the same; and in considering such testimony as evidence in this cause without the same being done.

"(c) In refusing or failing to rule on your petitioner's motion made at the close of the proofs of the Friends of the Court, to dismiss said proceedings and in not granting said motion and in not dismissing said proceedings.

"(d) In its conclusions and findings of fact and as to each of the same, as set forth in its opinion, Exhibit C, and in its Order, Exhibit D, and that the same are contrary to the evidence in said cause.

"(e) In finding that the acts mentioned in said Order, Exhibit D, were done by your petitioners 'wilfully, unlawfully, knowingly, perversely, contemptuously, falsely, fraudulently and intentionally,' as charged in the petition for disbarment in this cause, there being no testimony to support the same and there being affirmative testimony showing that said acts were not so done.

"(f) In holding that the findings support the order of disbarment.

"(g) In entering an order of disbarment upon said findings.

"(h) In disbarring your petitioner.

"(i) In refusing to stay said order pending a review by this honorable court."

It is well that we keep in mind the fact that this case is before us upon certiorari, under the provisions of Sec. 10,497, Compiled Laws; and that it has been often held that the office of a certiorari is not to review questions of fact, but questions of law. And that in examining into the evidence, the appellate court does so, not to determine whether the probabilities preponderate one way or the other, but simply to determine whether the evidence is such that it will justify the finding as a legitimate inference from the facts proved, whether that inference would, or would not, have been drawn by the appellate tribunal.

Jackson v. The People, 9 Mich., 111.

1. It is claimed that the court erred in overruling the demurrer, and in overruling each and every ground thereof.

After an examination of the demurrer, both general and special, we are of the opinion that it was properly overruled. The charges and specifications were explicit and clear, and the practice followed has been approved by this Court.

In re Shepard, 109 Mich., 631.

Randall v. Brigham, 7 Wall., 523, was a case which reached the Supreme Court of the United States on error to the United States Circuit Court for the District of Massachusetts. The action was brought by plaintiff, who was an attorney and counselor-at-law in Massachusetts, against the defendant, who was one of the Justices of the Superior Court of that state, for an alleged wrongful removal by

him of the plaintiff from the bar. Objection was raised to the sufficiency of the charges brought against the plaintiff. The statute of that state gave the Superior Court, it being a Court of general jurisdiction, power to remove any attorney "for deceit, mal-practice, or other gross misconduct." It was there held that formal allegations making specific charges of mal-practice or unprofessional conduct, are not essential as a foundation for proceedings against attorneys. "All that is requisite to their validity is that, when not begun for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made, and opportunity afforded him for explanation and defense. The manner in which the proceedings shall be conducted, so that it be without oppression or injustice, is a matter of judicial regulation."

A reference to our statute (Secs. 1128 and 1130) will show that its provisions were complied with in this proceeding. If the petition was true, it set forth sufficient grounds for the disbarment of respondent.

2. It is urged that the Court erred in not requiring each witness to examine his or her testimony, and to correct and sign the same; and in considering such testimony as evidence, without the same being done. We think that there is no merit in this point. The testimony was taken in open court before one of the Circuit Judges. It would have been perfectly regular and competent for this Judge to have alone, heard and disposed of the case. He saw fit to call in two other Judges to hear and decide the case, all acting together. We know of no rule requiring testimony so taken to be examined and signed by the witness.

3. The remaining allegations of error go to the merits of the whole case, and may well be examined together.

They were well expressed by respondent's counsel in the oral argument when he said, that two questions were presented:

First. Was there a fair trial?

Second. Was there evidence to support the findings?

After reading this record with great care we are constrained to hold that both of these questions should be answered in the affirmative. By the uncontradicted evidence in the case, the manner in which the respondent handled the Oxnard estate, not only cannot be justified, but shows such a disregard of his legal obligations and duties as executor under the will of John E. Oxnard, deceased, to the legatees and to the Court, as calls for censure and condemnation. It is true that he was given by the will large powers of sale and investment, but the testator added, "in such manner as he may deem best to preserve my estate for the purposes herein named."

Mr. Oxnard died in November, 1899. The will was admitted to probate January 4, 1900, and the respondent qualified as executor.

The total amount of the estate including the life insurance, which came into the respondent's hands, was claimed to be over $30,000.00. Payments were made by respondent as executor to the widow and daughters, and to the surviving daughter from early in 1900 to July 1908. During this time no inventory of the estate and no executor's account had ever been filed in the Probate Court, although the legatees had on numerous occasions requested the respondent to close the estate.

On March 10, 1908, the Probate Court ordered the respondent to file an inventory and his final account within thirty days after service of a copy of the order. On the 26th day of May, 1908, a further order was entered that the inventory and account be filed on or before June 26, 1908. These orders were disobeyed. On August 6, 1908, a petition was filed in said Court by Florence O. Beach, the surviving daughter, reciting the issue and service of the orders of March 10th and May 26th, and averring the disobedience of respondent, and on July 22nd an order for his arrest and imprisonment was made. The petition asked that respondent be removed as executor and trustee, and that a suitable person be appointed in his place. The warrant was issued July 22nd. On August 25, 1908, the sheriff returned

that he could not find responednt, and on the same day an order was made by the Probate Court removing respondent from his executorship, and on September 13th Emmet A. Perry was appointed in his place. September 2nd, respondent filed his inventory and account. Objections were duly filed by the widow and daughter to the account. Later respondent filed an amendment of the account. On November 17, 1908, respondent was ordered to give a bond in the sum of $20,000.00 as trustee, and proof of the service of the order was filed November 23rd. He did not comply with the order. The hearing on the account was adjourned from time to time, but on May 15, 1909, the Probate Court made an order and adjudication that

"The cash balance due from said executor at this date, including interest, is the sum of $21,611.34, of which the sum of $5,537.16 is due Elizabeth R. Oxnard, and said executor is hereby ordered to pay over said sum to her forthwith. The Court finds that the cash balance due the fund provided in said will for the benefit of said Florence Oxnard Beach is the sum of $15,904.19, to be hereafter assigned to the trustee to be appointed by this Court."

The Security Trust Company of Detroit was appointed such trustee, and on July 14, 1909, the Probate Court ordered that

"The cash balance due the fund provided in the will of said John E. Oxnard for the benefit of Florence Oxnard Beach, being the sum of $15,904.19 with interest thereon from said May 15, 1909, be and the same is hereby assigned to said Security Trust Company, Trustee. And it is further ordered that George W. Radford forthwith turn over the said cash balance of $15,904.19 and the interest thereon to said trustee."

From this record it appears that respondent has not paid over any of said sums. He has not appealed from said orders or either of them. He claimed in the Court below that the amounts decreed against him were too large, but in his answer he admitted an indebtedness of over $5,000.00. He made investments in his own name in both personal and

real estate, showing no connection with the trust. He kept the money belonging to the trust in his own bank account and drew therefrom for his own uses, as well as for payments in the trust matters, without his checks or books showing any difference between the two. He kept no accounts as executor showing his investments. As to two pieces of real property in which he had invested the money of the estate, taking the title in his own name as absolute owner, (both of which were mortgaged by him, and both of which were lost upon foreclosures of mortgage) he did not upon the trial produce or prepare any statement of receipts of rents or disbursements, although often asked so to do. His testimony upon those subjects was evasive, inconclusive and very unsatisfactory. One cannot impartially read this record without reaching the conclusion that the respondent acted in bad faith in dealing with this estate; that he was guilty of deceit in his fiduciary relation to the legatees, and that the judgment of the Circuit Court was fully justified. The evidence shows not a mere mistake in judgment, but a studied purpose and design to exploit the assets of this estate in his own interest, and not to preserve the estate for the purposes named in the will. The respondent is presumed to know the law, and his duty to those with whom he stands in a trust relation. We can reach but one conclusion, and that is that he acted in bad faith.

It is significant that in each of the cases in which the respondent is charged with improper and unprofessional conduct in the petition, he managed to get the legal title to the property of his *cestuis que trustent* or clients, into his own name, as the absolute owner thereof. This opinion might well end here. But we shall notice some of the points urged by counsel for respondent.

It is claimed that the court has no right to disbar an attorney, until by a judicial proceeding, determined in a judicial way, the court shall find that by some criminal conduct on his part of which he has been convicted, or for some professional misconduct, he has forfeited his right to practice law.

The early case, In the Matter of Mills, 1 Mich., 392, fully

meets and answers this point. That case has been cited and followed many times.

The following authorities are in point here:

Sanborn v. Kimball, 64 Maine, 140.

This was a proceeding in behalf of the bar of Penobscot County for a removal of Kimball from the office of Attorney and Counselor at Law. The Court holds that an attorney at law is an officer of the Court, and may be removed from office for misconduct, ascertained and determined by the Court, after an opportunity to be heard has been afforded. The statute of Maine makes "A good moral character a condition precedent to admission to the bar." It was held that when an attorney at law had forfeited his claim to such character by such misconduct, professional or non-professional, in or out of court, as rendered him unworthy to society in general, and unfit and unsafe to be entrusted with the powers, duties and responsibilities of the legal profession, the court may deprive him of the power and opportunity to do further injury, under the color of his profession, by removing him from the bar. The case of Mills, 1 Mich., 392, is cited with approval in that case.

In re Thatcher, (Ohio) 89 N. E., 39, it was held that in order to justify the Court in disbarring an attorney, is was not necessary that his offense should constitute a contempt or a crime, or that he should be convicted of a crime or contempt before disbarment. That while the power of disbarment should be exercised with great caution, yet where the respondent had been found guilty of unprofessional conduct involving moral turpitude, and of misconduct affecting his character and standing as an attorney, and especially where he had manifested no signs of regret and retracted nothing, the courts will not hesitate, through sympathy for the individual, to protect themselves from scandal and contempt, and the public from prejudice, by striking such person from the roll of attorneys.

Ex Parte Wall, 107 U. S., 265. In this case it was held that an attorney's name will be struck off the roll, among

other things, if he is guilty of gross misconduct in his profession, and of acts, although not done in his capacity as an attorney, gravely affecting his character as an attorney; but if the acts charged are indictable and are fairly denied, the Court will not proceed against him until he has been convicted by a jury. And the Court said:

"The cases are quite numerous in which attorneys, for malpractice or misconduct in their official character, and for other acts which showed them to be unfit persons to practice as attorneys, have been struck from the roll upon a summary proceeding without any previous conviction of a criminal charge."

Citing many cases, including In re Mills, 1 Mich., 392, and In the Matter of George W. Wool, 36 Mich., 299.

This case reviews many of the cases already cited at great length.

State v. McClaugherty, 33 W. Va., 250, holds that when an attorney commits an act, whether in the discharge of his duties as an attorney or not, showing such want of professional or personal honesty as to render him unworthy of public confidence, it is not only the province but the duty of the Court, upon proper presentation of the case, to strike his name from the roll of attorneys.

In re Spencer, 122 N. Y. Supp., 190. It is worthy of note that the statute in New York is similar to ours in that it provides "an attorney and counselor who is guilty of any deceit, malpractice, crime or misdemeanor, may be suspended or removed from office." The case holds that the question for determination, both in appointing an attorney to, and removing him from his office, is whether he is qualified to hold it. It is also held that his removal is not penal in character.

See Bar Association of City of Boston v. Greenhood, 168 Mass., 169. In this case the authorities are generally reviewed, and it is held that the primary purpose of the proceed-

ing is not punishment, but the preservation of the virtue of the courts and protection to the public from attorneys who disregard their oaths of office; and attorneys may be removed for causes not included in the statute, such as ceasing to be of good moral character within the meaning of these words as used in the statute, prescribing requirements for admission to the bar.

In re Wilson, (Kas.) 100 Pac., 635, it was held that whenever one who was in fact a lawyer accepted employment to act for someone else in a business transaction, in the course of which he received money belonging to his employer, his wrongful detention of it is a sufficient ground for his disbarment, although he may not have been called upon to give legal advice or to take part in litigation. That "such conduct would justify excluding him from the practice of the law, as it would certainly be a just cause of refusing an application for admission to the bar." Citing In re Smith, (Kas.) 85 Pac., 584. In this case the amount of money received and misappropriated was inconsiderable.

People v. Salomon, 184 Ill., 490. This was a proceeding to disbar respondent Moses Salomon for misconduct in his office as an attorney. In this case an attorney, acting for an administrator, who had collected money due the estate after the administrator had fled, and invested it in his own business, defying the orders of the Probate Court to turn the money over to an administrator appointed by it, was held guilty of such misconduct in office as authorized his disbarment. The Court said:

"Such conduct on the part of an attorney at law must be regarded within the statute, 'as malconduct in office,' and must be condemned as unworthy of the honorable profession to which he belongs. Sharswood, in his Essay on Professional Ethics, says: 'There is no class of men among whom moral delinquency is more marked and disgraceful than among lawyers. Among merchants so many honest men become involved through misfortune that the rogue may hope to take shelter in the crowd and be screened from observation. Not so the lawyer. If he continues to seek

business he must find his employment in lower and still lower grades, and will soon come to verify and illustrate the remark of Lord Bolingbroke that, "The profession of the law, in its nature the noblest and most beneficial to mankind, is in its abuse and abasement the most sordid and pernicious" ' "

People v. Chamberlain, 242 Ill., 260. This case holds that the power of the Supreme Court of Illinois to disbar an attorney is an inherent one, which exists independently of any statute on the subject; and if satisfied that the attorney has acted fraudulently and in bad faith, the Court may disbar him regardless of whether or not the case comes technically within the provisions of the statute.

It is also held that the fact that a client had settled with his attorney for money collected, did not preclude subsequent inquiry into the moral and professional character of the attorney's acts; and if it was shown that he had acted in bad faith towards such client, and had obtained by misrepresentation and concealment of facts money to which the client was rightfully entitled, the Court might disbar the attorney notwithstanding such settlement.

In Randall v. Brigham, supra, the Court said:

"The authority of the Court over its attorneys and counselors is of the highest importance. They constitute a profession essential to society. Their aid is required not merely to represent suitors before the Courts, but in the more difficult transactions of private life. The highest interests are placed in their hands and confided to their management. The confidence which they receive, and the responsibilities which they are obliged to assume, demand not only ability of the highest order, but the strictest integrity. The authority which the Courts hold over them, and the qualifications required for their admission, are intended to secure those qualities."

Many more cases might be cited, going much further than we find it necessary to go to sustain the judgment of the Court below.

We find no error in the proceedings, and the judgment of the Circuit Court is affirmed.

Signed:

J. W. Stone,
Flavius L. Brooke,
J. H. Steere,
Joseph B. Moore,
Chas. A. Blair.

Endorsed:

Filed, February 10th, 1912.

Chas. C. Hopkins,
Clerk Supreme Court.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the tenth day of February, in the year of our Lord, one thousand nine hundred and ten.

Present: The Honorable

Joseph B. Moore,
Chief Justice.

Joseph H. Steere,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

In the Mattor of — No. 24279.
George W. Radford

The record and proceedings in this cause having been removed to this Court, by Writ of Certiorari, issued to the Circuit Court for the County of Wayne, and the same and the matters and proceedings therein, having been seen and inspected and duly considered by the Court and No Error appearing therein; Therefore it is Ordered and Adjudged that the judgment of said Circuit Court for the County of Wayne, disbarring the said George W. Radford, be and the same is hereby in all things affirmed.

STATE OF MICHIGAN

In the Supreme Court—ss.

I, Jay Mertz, Deputy Clerk of the Supreme Court of the State of Michigan, and deputy keeper of its records and seal, hereby certify that the annexed and foregoing is a correct copy of the opinion duly filed in said Court and cause and of the final order entered thereon; that I have compared the same with the original, and that each is a true copy thereof, and the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Lansing, this 29th day of March, A. D. 1916.

(Sgd.) Jay Mertz,
Deputy Clerk

In the Supreme Court—ss.

I, John W. Stone, Chief Justice of the Supreme Court of the State of Michigan, do hereby certify that Jay Mertz whose genuine signature is affixed to, and who executed the foregoing certificate, was, at the time of its execution, the Deputy Clerk of said Court, duly appointed and qualified to said office, according to law.

Witness my hand and seal of said Court this 29th day of March, A. D. 1916.

John W. Stone,
Chief Justice Supreme Court of Michigan.

In the Supreme Court—ss.

I, Jay Mertz, Deputy Clerk of the Supreme Court of the State of Michigan, hereby certify that the Honorable John W. Stone, whose genuine signature is affixed to, and who executed the foregoing certificate, was, at the time of its execution, the Chief Justice of said Court, duly elected and qualified to said office, according to law.

Witness my hand and seal of said Court this 29th day of March, A. D. 1916.

Jay Mertz,
Deputy Clerk

The Supreme Court of
THE UNITED STATES

OCTOBER TERM, 1915.

BERNARD B. SELLING, OTTO KIRCHNER, HENRY M. CAMPBELL, CLARENCE A. LIGHTNER and SIDNEY T. MILLER, a special committee appointed by the Association of the Bar of the City of Detroit,
Petitioners.

v.

GEORGE W. RADFORD,
Respondent.

BRIEF FOR PETITIONERS.

George W. Radford of Detroit, Michigan, was admitted to practice in the Supreme Court of that state on June 15, 1876. On March 18, 1886, he was admitted to practice in the Supreme Court of the United States. His admission to practice was based upon his having been an attorney and counselor for three years in the Supreme Court of the state to which he belonged and upon his private and professional character appearing to be fair.

Thereafter the said George W. Radford so conducted himself that on June 3, 1909, a petition was filed in the Circuit Court for the County of Wayne, State of Michigan, (the County of Wayne includes the City of Detroit in which Radford then resided and still resides) praying for his disbarment on many grounds, all of which involved fraud and moral turpitude. Radford demurred to the petition. His

demurrer was overruled. He then answered. He was given a trial upon the merits before three of the Circuit Judges, and a unanimous opinion was handed down by the Circuit Court for the County of Wayne, three judges concurring, finding the said Radford guilty of the charges made against him and finding as a fact that the said George W. Radford "had disgraced his profession and had been guilty of conduct which showed conclusively that he is not a fit person to be permitted to practice law." See paragraph 4 of Petition. Thereupon a formal order was entered striking the name of Radford from the roll of attorneys and forever disbarring him from practicing as an attorney and counselor-at-law, or solicitor in chancery, in any of the Courts of the State of Michigan. From this order Radford brought a writ of certiorari to the Supreme Court of Michigan. The case was argued in the Supreme Court and an opinion handed down affirming the opinion and order of the lower Court, a copy of which opinion is annexed to the petition, and is reported under the name In re Radford, 168 Mich., 474.

Since Radford has been disbarred in the State of Michigan, he continues to practice law in the City of Detroit, under the claim that being a member of the bar of this and other Federal Courts, he is still a lawyer in good standing. This application is made by the petitioners acting for the Association of the Bar of the City of Detroit, to permit the filing of a petition for a rule to show cause why his name should not be stricken from the roll of attorneys of this Court because of his disbarment for dishonest practice in the highest Courts of the state in which he resides.

THE LAW.

The admission of Mr. Radford to the bar of the Supreme Court of the United States was based upon two things:

I. That at the time of his admission he had been an attorney and counselor for three years theretofore preceding in the Supreme Court of Michigan.

II. That his private and professional character appeared at that time to be fair.

Neither of these conditions at the present time exists. He is no longer a practitioner in the Supreme Court of Michigan (having been disbarred for dishonest practices) and his private and professional character no longer appear to be fair. It is submitted that he should not be permitted longer to remain upon the rolls of this Court as an attorney, and to use his appearance thereon to practice law, something which the Courts of his own state have forbidden him to do. It is conceded that every Court must decide for itself what persons should practice before it and that it may be that this Court is not bound to disbar an attorney simply because he has been disbarred in the highest Court of his own state. So far as petitioners know there are no rules in this Court regulating the subject of disbarment, and the Court upon the matter of any proposed disbarment takes such action as the conduct of the attorney deserves and the dignity of the Court requires. It certainly is beneath the dignity of this Court to continue as a member of its bar one who has been held by the Courts of his own state to be a disgrace to his profession, and whose conduct has been judicially determined to be such that he is not to be trusted and is not a fit person to be permitted to continue the practice of law.

Petitioners take the position that the findings of both the Circuit Court for the County of Wayne and the findings of the Supreme Court of the State of Michigan are conclusive upon Radford as to his professional misconduct involving moral turpitude and we think it would be unseemly to expect this Court, (basing the right of admission to its bar upon the standing of a practitioner in the highest Court of his own state) in a collateral proceeding, to review the question whether the findings of the Court of the State of Michigan were or were not justified.

A disbarment proceeding based upon anything other than the fact that Radford has been disbarred for moral turpitude in the highest Courts of his own state, and that his private and professional character no longer appear to be fair, would

involve an inquiry *de novo* as to the acts of misconduct of which Radford has been held guilty. Such a hearing *de novo* would present the anomalous situation of this Court a thousand miles away (through a Commissioner) going into charges which were heard in the Courts of the State of Michigan where Radford resides and which were based upon actions by him in such Courts.

This phase of the matter has been discussed at length, for the reason that the Circuit Court of Appeals for the 6th Circuit has apparently held in the case of In re Thatcher that a proceeding in disbarment in the Federal Court may not rest merely upon the judgment of a Court of another jurisdiction, but must be based upon proof of the actual misconduct. This view of the matter is referred to, in the subsequent decision of the Circuit Court of Appeals disbarring Thatcher, 212 Fed., 802, and apparently was based upon the authority of Ex Parte Tillinghast, 4 Pet., 108. An examination of the case of Ex Parte Tillinghast shows an altogether different situation. Tillinghast was a practitioner in the highest Court of his state. He had been disbarred in an inferior Federal Court for contempt of Court and not for anything involving moral turpitude. This Court held that his disbarment in the inferior Federal Court, based as it was upon a contempt proceeding, did not prevent his admission to the bar of the Supreme Court of the United States. The circumstances of that case and those of the case at bar differ materially.

This Court, were Mr. Radford not already a practitioner before it, would not under the circumstances admit him to practice at its bar. If it would not admit him to practice, why should his name not be stricken from the roll for the same reason that would prevent his admission at the present time?

In the Thatcher case it is quite possible that the Circuit Court of Appeals took the correct position, inasmuch as apparently the disbarment of Thatcher in the Ohio Court was based upon actions by Thatcher which were contemptuous in their nature but which did not involve moral turpitude.

It is submitted that where an attorney has been held, in the highest Court of his own state, guilty of misconduct involving moral turpitude and has been disbarred, he ought also to be disbarred in the Supreme Court of the United States, and should not be permitted to use the cloak of respectability which membership in the bar of this Court casts about him, to continue the practice of the law in a state, the Courts of which have disbarred him for dishonest practices.

Any other conclusion would lead to the situation that an attorney after he had been practicing in his own state for three years might obtain admission to the bar of this Court and thereby, after disbarment for misconduct involving moral turpitude in the Courts of his own state, obtain a review of such disbarment proceedings in a collateral manner by insisting that he be tried *de novo* in this Court as to such misconduct involving moral turpitude.

This conclusion is supported by the authority of United States ex rel Hallett v. Green, 85 Fed., 857; and this Court in the case of Ex Parte Bradley, 7 Wall., 364, has called attention to the difference between a disbarment for contemptuous conduct and a disbarment involving moral turpitude. We respectfully ask that a rule be granted by this Court against said George W. Radford, requiring him to show cause by a day certain why his name should not be stricken from the rolls of this Court.

(Sgd.) BERNARD B. SELLING,
(Sgd.) OTTO KIRCHNER,
(Sgd.) HENRY M. CAMPBELL,
(Sgd.) CLARENCE A. LIGHTNER,
(Sgd.) SIDNEY T. MILLER,
Petitioners.

(Sgd.) JOHN W. DAVIS,
Solicitor General of the United States
for Petitioners.

Supreme Court of the United States

No. 21, Original, October Term, 1916.

Ex Parte, Bernard B. Selling et al,
Petitioners.

ANSWER OF GEORGE W. RADFORD TO ORDER TO SHOW CAUSE.

To the Hon. Edward D. White, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.

In compliance with the order to show cause why the prayer of petitioners should not be granted, issued by this Honorable Court on June 12th, 1916, and served on or about June 15th, 1916, the above named respondent does hereby respectfully present that:

1. He admits the first paragraph of said petition.
2. He admits the second paragraph of said petition.
3. He denies that after his admission to this court, his

private and professional character ceased to be fair; he admits that on or about June 3rd, 1909, a petition was filed against him in the circuit court for the county of Wayne, and State of Michigan, purporting to be "at the instance and on the recommendation" of the Detroit Bar Association; he avers that said Detroit Bar Association, as a body, never took any action in regard to said matter; that said proceeding was instituted by the Executive Committee, so-called, of said association; and that said association was a cor-

poration composed of less than one-fourth of the members of the Detroit Bar and was the predecessor of "The Association of the Bar of the City of Detroit," hereinafter referred to.

The petition aforesaid was very lengthy; but the part thereof deemed essential for the purpose of this answer relates to the estate of John E. Oxnard, deceased—in which your respondent was executor and trustee, under the will of said Oxnard, wherein respondent was authorized to sell the property of said estate at public or private sale, "and to invest the proceeds thereof in such manner as he may deem best to preserve my estate for the purposes herein named."

Said petition charged that respondent had wilfully neglected to file an inventory of said estate within thirty days after his appointment. As to that charge respondent avers that the preparation and filing of inventory within that time was impossible because said estate was so widely scattered, the Probate Court was so advised, and consented to the delay, as appears by the uncontradicted testimony in the record.

The further charge was made, that respondent had invested the funds of said estate in his own name, and in "worthless securities," and said circuit court so found; but this respondent avers that said finding was contrary to the record and that the investment of a portion of the funds of said estate, together with some of his own funds was honestly made, for the purpose of preserving said estate, and the investments so made were valuable and under the circumstances were judicious and within the authority of said will. Only two of such investments were complained of, both of which will be more fully explained hereinafter.

This respondent denies that due consideration was given to said petition by three of the six judges of said Circuit Court and avers that the testimony was heard by only one of them, namely, Hon. Morse Rohnert, now deceased.

This respondent admits that an opinion prepared by James O. Murfin, then one of the circuit judges of said

county, was filed July 20th, 1910, as set forth in the petition herein.

This respondent further avers, that some time prior to the filing of said petition he was connected with the establishment of a one cent daily newspaper at Detroit, called "Detroit Today;" that the starting of said paper was instrumental in compelling the Detroit Journal, a two-cent daily paper in said city, to sell its paper for one cent; and thereafter, and almost daily from about February 2, 1909, until after the decision of respondent's case in the Wayne Circuit Court, attacks were made upon him in said Detroit Journal followed by other newspapers in the city of Detroit.

Respondent avers that no client was identified with the institution of said proceedings, nor was any criminal complaint ever made against him.

4. This respondent admits that a formal order, dated July 21st, 1910, was entered by said Circuit Court whereby respondent was "forever disbarred from practicing as an attorney and counselor at law and solicitor in chancery in any of the courts of this state."

This respondent further avers that upon the making of said order on July 21st, 1910, he applied to said circuit court for a stay of proceedings pending a review thereof by the Supreme Court of Michigan, in order that he might finish business then pending in said circuit court, which request was immediately denied.

5. This respondent admits that he was granted a review of said proceedings by writ of certiorari in the supreme court of Michigan, and admits that the report of said cause appears in volume 168 of Michigan reports at page 474, and he admits that a copy of the opinion of said Supreme Court is set forth in said petition; but this respondent respectfully calls the attention of this court to said opinion, in which at page 487 the court say:

"It is well to keep in mind the fact that this case is before us upon certiorari, under the provisions of Sec. 10,497, 3 Comp. Laws; and that it has been often held that *the office of a certiorari is not to review questions of fact, but questions of law. And that in examining into the evidence, the appellate court does so, not to determine whether the probabilities preponderate one way or the other, but simply to determine whether the evidence is such that it will justify the finding as a legitimate inference from the facts proved, whether that inference would or would not have been drawn by the appellate tribunal.*"

Jackson v. People of Mich., 111."

6. Respondent further avers, that the contempt of court referred to in said opinion was his failure to render an account at the time required by the probate court, and that the warrant of July 22nd, 1908, was issued by said probate court at a time when this respondent was sick in bed at his residence and unable to attend to business, which was the sole cause of his delay in making said report, and that no testimony to the contrary was introduced on said hearing.

This respondent further avers that he did not act in bad faith with relation to any trust funds, nor was he guilty of any studied purpose or design to exploit the assets of the Oxnard Estate to his own interests, but everything he did was done in good faith, and it was never claimed by him that the funds of the Oxnard Estate invested by him, were his own, and his action was intended and taken solely for the benefit of said estate.

He further avers that of the two investments so made, hereinbefore referred to, one thereof was a house and lot situate at 171 Fort St., West, Detroit, then bringing a rental of one hundred dollars per month, which investment he offered to turn over to said Oxnard Estate at the sum of four thousand dollars, which offer was refused, and that within a year from the decision of said Supreme Court said property was sold by respondent for $13,500.00 cash; that the

other of said investments was real estate situate at the northwest corner of Clairmont and Woodward Avenues, Detroit, and that instead of being worthless, said property was then worth double what respondent paid for it, and was sold about a year ago for $75,000.

7. Said respondent admits that he has not been reinstated by said Circuit Court, and avers that he made no application for reinstatement prior to the commencement of these proceedings in this honorable court.

Respondent denies that he continues to practice law in the city of Detroit in the state courts, but that he has done such legal work as he had a right to do under the statute of the State of Michigan, by virtue of which, and the order of disbarment he is only precluded "from practicing as an attorney and counselor at law and solicitor in chancery in any of the courts of this state;" and this respondent denies that he has made charges to clients for services rendered since the aforesaid decision of the Supreme Court of Michigan because he was a member of the bar of the Supreme Court of the United States, except for services rendered in connection with business in this court, and in other federal tribunals, as he had a right to do, one of such cases being Crosley v. Reynolds, U. S. Circuit Court of Appeals, Sixth Circuit, 196 Fed., 640.

8. This respondent denies that said corporation, the "Association of the Bar of the City of Detroit," has ever taken any action at any regular or called meeting of the members thereof in regard to this petition, nor has the matter ever been submitted to the members of said association other than the members of the Executive Committee thereof, so-called, who have presumed to appoint the "special committee," to file this petition.

Respondent avers that he is informed and verily believes that the record of the proceedings of the Executive Committee of the said Association of the Bar of the City of Detroit shows in substance the following actions of said committee taken, with reference to respondent since the

aforesaid decision of the Supreme Court of Michigan on February 10, 1912:

1912.

May 23rd. Report of Grievance Committee on disbarment of Radford as proposed, read by secretary and discussed. George L. Canfield appointed a committee of one to report next meeting.

June 10th. Geo. L. Canfield appointed a committee of one to ascertain procedure against Radford. Recommended that a certified copy of the order of disbarment be sent "to the various United States Courts."

1913.

Sept. 25th. Selling was appointed a committee of one to examine Michigan authorities and statutes relative to disbarment of attorneys practicing in Michigan, and report at next meeting.

Oct. 23rd. Motion carried, directing secretary to present to Judge Tuttle, certified copy of order disbaring Radford.

Present: Sidney T. Miller, Canfield, Selling, and others. Selling made a partial report relative to disbarment decisions.

1914.

Feb. 19th. Communication received from Fitzpatrick, asking instructions relative to disbarment of Radford in United States Court.

Secretary was instructed to suggest filing transcript of state proceedings relative to disbarment, and petition to disbar Radford in United States Court.

July 24th. Fitzpatrick called on for a report regarding filing a petition against Radford in U. S. District Court.

Nov. 4th. M. H. O'Brien appointed to assist Fitzpatrick in filing petition in U. S. District Court.

This respondent avers that the foregoing records show that the petitioners here before the court, were advised

of the established rule of law that each state or Federal Court passes upon the right of attorneys to practice before it, and that no attorney has a right to appear in any Federal Court, under the law as it exists, unless he has been admitted to practice in that particular court; which rule is followed throughout the Sixth Circuit.

9. This respondent further avers that no charges whatever were made against him in either his public or private or professional capacity for anything except the matters set forth in said petition for disbarment.

That from that time to this, now over six years, he has strictly obeyed the aforesaid order, but has maintained an office in Detroit, for the transaction of such business in the matter of advice, counsel, drafting of pleadings, etc., as he had a right to do.

10. Your respondent further shows, that since said finding and order of July 20 and 21, 1910, it has been demonstrated that some of said findings were erroneous, and that others are unsupported by the record before the Supreme Court of Michigan, namely:

A. The (probate) court found $21,611.34 due the Oxnard Estate, and that he had neither appealed from the order, or paid the money (Radford Record, p. 1175). (A printed copy of said record is forwarded to the clerk herewith and permission is asked that the same may be filed as a part hereof).

No such sum was ever legally due the Oxnard Estate, and it was arrived at, in the probate court, by disregarding the aforesaid investments respondent as executor and trustee had made, and computing interest by Register Hulbert for Probate Judge Durfee, at seven per cent, compounded semi-annually from the date of its receipt, contrary to the law of Michigan as expressed by the Supreme Court in Gott v. Culp, 45 Mich., 265, on page 274.

11. Your respondent further states that the claim of the Oxnard Estate against him was fully settled and paid by

him on October 21st, 1911, before his case was heard by the Supreme Court of Michigan, and on Nov. 18, 1912, he was fully discharged as executor of said Oxnard Estate, and his bond as such was cancelled by said probate court.

12. Your respondent, further shows, that the other matters referred to in said finding were either disposed of in his favor before that time, as was the Dean case in which Judge Hosmer's decision was reversed by the Supreme Court of Michigan. Dean v. Radford, 137 Mich., 617. The Myers' decree against him, he has paid, after its review and affirmance in this honorable court.

Radford v. Myers, 231, U. S., 725.

13. Your respondent further shows, as he is informed and believes, that paragraph V of the petition for his disbarment, viz:

> "V. The said George W. Radford has been and is guilty of immoralities which utterly unfit him for the faithful discharge of the duties of an attorney to his clients and to the courts in which he may practice, and his character can no longer be approved by this court or any other courts, and neither litigants, nor the public, nor the courts may safely rely upon his honor and integrity."

Which was demurred to by respondent as too vague and indefinite, was stricken out by the full court on the hearing of the demurrer, on Sept. 25, 1909, for that reason, yet, it is substantially included in the order of July 21st, aforesaid, (Radford Record, p. 1183), as follows:

> "Said George W. Radford has been and is guilty of immoralities which utterly unfit him for the faithful discharge of the duties of an attorney to his client and of the court in which he may practice, and the court doth hereby find that the character of the said George W. Radford is such as shall no longer be approved by this court or any other court, and is such that we or the public cannot safely rely upon his, said George W. Radford's honor or integrity."

And your respondent says that no such charge was made against him on the hearing of said petition, nor was any proof given on the subject.

14. Your respondent further shows, that next in order of time and during the year 1913, many members of the Detroit Bar, and of the Association of the Bar, hereinafter referred to, expressed to him their wish that said order of disbarment of July 21st, 1910, should be vacated, and therefore, a petition, a copy of which is hereto attached, marked A, was prepared, and received 132 signatures; eight of said signers have died in the meantime. Said petition is now on file in the Circuit Court for the County of Wayne.

15. Respondent further shows that after said decision of the Supreme Court of Michigan in 1912, Catherine B. Weir, of Detroit, consulted and employed him concerning her claim for breach of trust against The Union Trust Company, individually, and as administrator of the Estate of Joseph H. Berry, The Country Club of Detroit, and others, and that suit in equity was brought therefor by respondent's son, with whom respondent's counsel herein, were associated, which suit was heard before and decided in her favor by Judge Van Zile of the Wayne Circuit Court, which decree on her appeal was modified in favor of said complainant and affirmed by the Supreme Court of Michigan, October 21st, 1915. Weir v. Union Trust Company, Vol. 22, Detroit Legal News, page 915.

Respondent further shows that the active solicitor for the defendant, The Country Club of Detroit, one of the defendants in said suit, was Sidney T. Miller, one of the petitioners herein, and president of the corporation, The Association of the Bar of Detroit, during the years 1911-1913.

16. That petitioner, Henry M. Campbell, was one of the solicitors of record for said Union Trust Company in Weir v. Union Trust Company et al, and in Union Trust Co. v. Electric Park Amusement Co., twice before the Supreme Court of Michigan, reported in 163 Mich., 687, and 168 Mich., 574, in which respondent represented the principal defendants. Said petitioner, Henry M. Campbell, was also

one of the solicitors of record in Union Trust Company v. Radford (respondent), a foreclosure case, in which the defense was usury, twice heard by the Supreme Court of Michigan, and decided in respondent's favor in 176 Mich., 50. Both of the two last mentioned cases were pending and determined cotemporaneously with said disbarment proceedings.

17. Respondent further shows that in the Gaukler-Electric Park Amusement Company cases, so-called and known in Detroit; both in the Wayne Circuit Court in Chancery and in the Supreme Court of Michigan, on appeal, before said disbarment was entered and so far as he might legally do since that time, he has rendered since 1907, valuable years of service to Arthur H. Gaukler, and his mother, Josephine Gaukler. The value of respondent's said services were agreed upon and a written settlement agreement was entered into October 21st, 1911, while said disbarment proceeding was pending before the Supreme Court of Michigan. Said settlement agreement was fully paid except certain notes of Josephine Gaukler and Arthur H. Gaukler to respondent aggregating $12,500, not due at the death of Arthur H. Gaukler, which occurred March 22, 1912. Respondent avers that had Arthur H. Gaukler lived, the payment of said notes never would have been questioned. But Josephine Gaukler, acting upon the advice of Otto Kirchner, one of the above named petitioners, refused payment of two of said notes aggregating $10,000, and your petitioner brought suit against her therefor, in said Wayne Circuit Court; that said petitioner, Kirchner, appeared as her counsel, and as one of the alleged defenses thereto asserted that said disbarment order invalidated said settlement agreement and said notes.

That during the trial of said suit in December, 1915, evidence was given of respondent's admission to the bar of this honorable court, the federal courts of Michigan, the circuit court of appeals of the sixth circuit and other federal courts of the United States. And respondent avers

upon information and belief that since said trial said Kirchner has advised and become active in the preparation and prosecution of the present petition in this honorable court.

19. Respondent further shows that the "Association of the Bar of the City of Detroit," is a Michigan corporation, organized May 2, 1911, succeeding the Detroit Bar Association. And according to the pamphlet published by it in 1911, had about 336 members, less than one-fifth of the Detroit Bar. Your respondent is not a member of it, and never applied for membership in it. At the election of Sidney T. Miller, as president thereof, only 23 votes were cast, of which he received eighteen. The Association, as respondent is informed, meets only once a year, and then to elect officers. These, and the following facts relating thereto, are referred to here, because the Supreme Court of Michigan states in its opinion in your respondent's case, 168 Mich., on p. 476: "The preceeding was taken at the instance and on the recommendation of the Detroit Bar Association."

20. Respondent further shows that about January 1, 1916, said "Association of the Bar of the City of Detroit, acquired the library of the Detroit College of law and immediately thereafter provided that only members of said Association could use said library, and accordingly its membership at this date, according to its mailing list, is about 450. Its By-laws, section 3, provide for an Executive Committee of eleven members, six of whom shall be appointed by the president and five shall be the officers of the Association.

Chapter X. "The Executive Committee shall have entire and exclusive control of the business of the Association, except as otherwise herein provided," etc.

Respondent avers that neither said "Association," corporation, or said Executive Committee has any authority over disbarment proceedings, or over any lawyer not a member of the association. Your respondent avers that he has never been a member of said association, and that said "Association" as such has never had any authority so to do

and has never taken any action in relation to the disbarment proceedings against respondent, or the ex parte petition of the "special committee appointed by the Association of the Bar of the City of Detroit."

Your respondent finally avers that the petitioners should not be accorded any standing in the alleged representative capacity in which they appear before this honorable court as a matter of law, and because their petition is presented for reasons personal to themselves and not as in any way representing the Detroit Bar.

Wherefore, this respondent prays judgment of said petition, and that the same be denied.

George W. Radford,
Respondent.

Thomas A. E. Weadock,
Attorney for Respondent.

Harrison Geer,
Of Counsel.

State of Michigan, }
County of Wayne. } ss.

George W. Radford, the above named respondent, being duly sworn, deposes and says, that he has read the foregoing answer by him signed, and that the same is true, except as to matters therein stated upon information and belief, and as to those matters, he has been so informed and so believes.

George W. Radford.

Subscribed and sworn to before me this 16th day of November, A. D. 1916.

Frederick L. Hoffman,
Notary Public, Wayne County, Mich.

My commission expires February 24, 1920.

EXHIBIT A.

STATE OF MICHIGAN—In the Wayne Circuit Court.

In re George W. Radford,
Misc. 211.

To the Circuit Court for the County of Wayne:

Your petitioners, members of the Detroit Bar, respectfully request this court to vacate the order of July 20th, 1910, in the above matter.

Allan H. Frazer.
A. C. Stellwagen.
James H. Cullen.
Walter Barlow.
Jas. R. Neill.
Jas. McNamara.
Luman W. Goodenough.
George W. Bates.
Fred H. Warren.
Fred W. Smith.
Frank F. Bumps.
E. H. Sellers.
Milford Stern.
Francis T. McGann.
J. W. Donovan.
Frank D. Andrus.
H. Geer.
J. G. Dickinson.
Chas. W. Casgrain.
Edward McNamara.
Malcolm McGregor.
Ormond F. Hunt.
Wm. E. Baubie.
John D. MacKay.
Leo Butzel.
D. H. Dwyer.
Frank E. Robson.
James D. May.
Frank S. Simons.
Fred Burton.
M. H. Bishop.
A. F. Sellers.
Louis Cohn.
Fred H. Aldrich.
Wm. M. Mertz.
John H. Powell.
Levi J. Fick.
A. J. Groesbeck,

John B. Corliss.
Chester A. Ferris.
Louis C. Wurzer.
F. C. Harvey.
Geo. B. Yerkes.
C. M. Burton.
Henry E. McCurry.
Edward S. Greece.
W. W. Chapin.
Ward N. Choate.
Chas. E. Dohany.
Frank N. Renaud.
D. J. Campau.
James H. Pound.
George Wm. Moore.
J. W. Dohany.
George H. Carlisle.
W. I. Robinson.
Joseph M. Weiss.
W. L. January.
Dwight C. Rexford.
Edwin Henderson.
A. B. Hall.
E. Wasey.
Thomas J. Mahon.
Thomas W. Thompson.
H. H. Hatch.
H. H. Markham.
Geo. M. Condon.
Ronald S. Kellie.
Arthur D. Maguire.
Henry G. Nicol.
Herbert V. Barbour.
Peter J. Monaghan.
John Miner.
Henry A. Haigh.
Frank A. Martin.
Eugene S. Clarkson.
George F. Monaghan.
Paul Weadock.
Harold H. Armstrong.

Henry M. DuBois.
John Galloway.
Isaac W. Payne.
Francis P. Dwyer.
J. T. Keena.
Raymond E. Van Syckle.
Henry F. Chipman.
Eugene L. Mistersky.
John H. Dohrman.
Wm. K. Campbell.
George X. M. Collier.
Ed. E. Kane.
E. T. Wood.
W. W. Wicker.
Frank W. Atkinson.
Maloney & Atkinson.
James Swan.
J. W. Finney.
James H. Bayne.
B. D. York.
L. C. Stanley.
Thomas Hislop.
John J. Speed.
Edwin Denby.
Ralph Phelps, Jr.
Herbert C. Munro.
John C. Rabaut.
E. T. Berger.
James A. Robinson.
Alexander K. Gage.
S. L. Merriam.
Ernest A. O'Brien.
Allan P. Cox.
James Whittemore.
John Anderson.
Frederic T. Harward.
John H. Goff.
Sanford W. Ladd.
F. H. Watson.
James Phelan.
Wm. F. Giefel.

James H. McDonald.
John C. Donnelly.
Joseph H. Clark.
Stephen D. Williams.
George S. Field.
Henry N. Brevoort.

W. F. Connolly.
Frank H. Dohany.
A. J. Hetchler.
Robert M. Dalton.
Robert T. Speed.
R. M. Brownson.

Supreme Court of the United States

No. 21, Original, October Term, 1916.

Ex Parte, In the Matter of Bernard B. Selling et al,
Petitioners.

BRIEF FOR RESPONDENT.

Respondent's answer shows that the petition should be denied because:

(a) The corporation petitioners' claim to represent has not authorized the proceeding.

(b) The petitioners' appearance as "a special committee appointed by the Association of the Bar of the City of Detroit" was without legal right or authority because the said Association took no action on the matter—the only action, if any, was by the Executive Committee.

(c) The petition was framed with the design to have it appear that the action taken was in behalf of the *Detroit Bar,* when that was not the fact.

(d) The action taken by the Executive Committee, as shown by its records in this matter, discloses its familiarity with the rule that the United States Courts in disbarment cases will not be bound by action in the State courts; and that, therefore, proceedings were planned and ordered in the United States District Court at Detroit, but abandoned.

(e) That the petition here is for the purpose of evading the above established rule of law in the 6th Circuit and therefore unjust to respondent.

(f) That if the petition is not denied for any of the reasons above given, justice requires that the taking of proofs should be ordered.

In addition to respondent's answer covering the above points, we desire to call the Court's attention to the case of Charles A. Thatcher, of Toledo, Ohio, which has been the most thoroughly tried disbarment case in recent years.

State Court Proceedings.

Charles A. Thatcher was disbarred by the Supreme Court of Ohio by an original proceeding in that court June 25, 1909. 80 Ohio State, 492, S. C., 89 N. W., 39.

A motion by Thatcher for reinstatement in the Supreme Court of Ohio was denied December 20, 1910.

Thatcher removed the case to the United States Supreme Court on writ of error, where it was docketed and dismissed March 21, 1910. 216 U. S., 625.

The Legislature of Ohio then passed a special act admitting Thatcher to the bar of Ohio, which became a law, without the governor's signature. Ohio Laws 1911, p. 84.

Federal Court Proceedings.

A certified copy of the proceedings in the Ohio Supreme Court was filed in the United States Circuit Court of Appeals, for the Sixth Circuit, and *a motion based thereon was made to strike Thatcher's name from the roll of attorneys of that court, but it was held* by the court on December 18, 1909, by Judges Lurton, Severens and Warrington, that it was *not bound by the decision of the Supreme* Court of Ohio, and it denied the motion.

An application for Thatcher's disbarment was also made to the United States District Court at Toledo, based upon a certified copy of the proceedings in the Supreme Court of Ohio, and a demand from the state committee that Thatcher's name be *ipso facto* stricken from the rolls of that court. This Judge Killits declined to do; but a committee of three members of the District Bar "who were without local atmosphere, and wholly beyond the possibility of any bias whatever," was appointed by the Court December 9th, 1910. 190 Fed., p. 973, last paragraph.

Killits, U. S. District Judge, said:

> "In order that respondent might not be embarrassed in the trial of several cases on our docket, the committee was directed to make no report prior to Jan. 25th, 1911." 190 Fed., on p. 974.

This committee recommended the appointment of a prosecuting committee.

The prosecuting committee instituted proceedings of disbarment before Judge Killits, of the United States District Court at Toledo, and after a hearing Thatcher's name was stricken from the rolls November 11, 1911. The case was then taken to the Court of Appeals on writ of error, pending which Thatcher was readmitted by the Supreme Court of Ohio. 212 Fed., p. 812, last paragraph.

There were intervening petitions for mandamus to perfect the record, etc.

The U. S. Court of Appeals affirmed the order of Judge Killitts on April 17, 1914, 212 Fed., 801, and a rehearing was denied Jan. 5, 1915. 219 Fed., 173.

Respondent then took out a writ of error, and also appealed from the U. S. Circuit Court of Appeals to the Supreme Court of the United States which held, on March 13, 1916, that mandamus was the proper remedy. 241 U. S., 644; citing Ex Parte Bradley, 7 Wall., 364; Ex Parte Robinson, 19 Wall., 513.

Petitioners in their brief, p. 38, refer to the Thatcher case and argue that the disbarment of Thatcher was based upon actions contemptuous in their nature but which did not involve moral turpitude. It is submitted that the petitioners are in error; the charges against Thatcher in both the State and Federal courts did involve moral turpitude, vide 212 Fed., p. 802, bottom, and p. 803, top; also in Re Thatcher, 190 Fed., 969. Syllabus by the Court, p. 970, and opinion p. 978.

Petitioners in their brief, p. 38, wholly disregard the rule laid down in the Thatcher case, that "the proposed action could not rest merely upon the judgment of a court of another jurisdiction, but must be based upon allegation and proof of the actual offense." 212 Fed., 803 and 190 Fed., 973, supra.

Petitioners also urged that because compliance with that rule would involve an inquiry *de novo* and present an "anomalous situation of this court, a thousand miles away (through a commissioner) going into charges which were heard," etc.

We venture to suggest that petitioners are wholly responsible for the "anomalous situation" thus created. They, or their predecessors, abandoned the correct course, which they seek to evade by the present proceeding—a proceeding which in effect is asking this court to follow the decision of the Supreme Court of Michigan, a decision that respondent could not have had reviewed by this Court on writ of error, because it presented no federal question. Such review by this court was attempted in the Thatcher case, but the case was dismissed. 216 U. S., 625, supra.

It is respectfully submitted that justice requires either that the petition should be denied, or that petitioners should be required to prefer charges in this honorable court, and proofs ordered taken thereon.

Thomas N. C. Weadock

Attorney for Respondent.

Harrison Geer

Of Counsel.

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Supreme Court of the United States

No. 27 Original, October Term, 1916.

Bernard B. Selling,
Otto Kirchner,
Henry M. Campbell,
Clarence A. Lightner and
Sidney T. Miller,
a Special Committee appointed
by the Association of the Bar
of the City of Detroit,
Petitioners,

v.

George W. Radford,
Respondent.

On Petition to Disbar.

BRIEF FOR RESPONDENT.

Thomas A. E. Weadock,
Attorney for Respondent.

Harrison Gray
Of Counsel.

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Supreme Court of the United States

No. 21 Original, October Term, 1916.

Bernard B. Selling,
Otto Kirchner,
Henry M. Campbell,
Clarence A. Lightner and
Sidney T. Miller,
a Special Committee appointed
by the Association of the Bar
of the City of Detroit,
Petitioners,

v.

George W. Radford,
Respondent.

} On Petition to Disbar.

BRIEF FOR RESPONDENT.

This brief is filed pursuant to the opinion of Mr. Chief Justice White, delivered March 6, 1917, for the purpose of presenting an "intrinsic consideration of the State record" in the following respects designated in said opinion:

1. **"That the state procedure from want of notice or opportunity to be heard was wanting in due process;"**

2. "That there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject;"

3. "That some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that under the principles of right and justice we were constrained so to do."

I.

State Procedure.

On pp. 1170-74 of the State record will be found a chronology of the proceedings in the Circuit Court for the County of Wayne, prepared, sworn to and introduced (pp 1088-9) as an exhibit for the purpose of showing the course and progress of the proceedings in that Court where they were first instituted. The printed record, which this Honorable Court permitted to be filed, is the record of the case in the Supreme Court of Michigan and was made up by the judges who heard the case in the Circuit Court, of the following material.

1. Respondent's petition to the Supreme Court of the State of Michigan for writ of certiorari to the Circuit Court for the County of Wayne, which with the exhibits and writ of certiorari issued thereon, covers the first 26 pages of the record;

2. The answer of the three circuit court judges, Hon. Henry A. Mandell, Hon. Morse Rohnert, and Hon. James O. Murfin, respondents to said petition, covers pp. 26-36, inclusive, and to which is attached as exhibits the entire record of the proceedings and evidence in the Circuit Court, which the friends of the Court and the respondent judges des-

ignated and relied upon; and the testimony on behalf of respondent.

The opening statement and evidence on the part of the friends of the court extends from p. 244 to and including the first half of p. 685 of the record. The remainder of the record is devoted to the evidence on the part of respondent and rebuttal thereto.

On page 27 will be found a communication from three members of the Detroit bar, bearing date January 20, 1909, addressed to the President of the Detroit Bar Association, calling attention to reported unprofessional conduct against respondent "both in the public press and by common rumor." This was the first step in the proceedings. Respondent had no notice thereof or of any of the subsequent proceedings taken by the Bar Association or by the Circuit Court, leading up to the filing of the charges, and was given no opportunity to be heard thereon.

On September 4, 1909, a petition for the disbarment of respondent, charges and specifications, signed and sworn to *on information and belief* by Charles W. Casgrain and Charles T. Wilkins, Friends of the Court, were filed and cover pp. 38-143, both inclusive, of the record.

Upon filing of said petition an order (pp. 144-45), was entered *requiring respondent to show cause on September 20, 1909 why the prayer of said petition should not be granted.* Respondent's counsel offered to have respondent accept service of the petition and order, because respondent was confined to his bed by severe illness, but this was declined and service was made thereof on September 29, 1909.

On September 10, 1909, respondent's counsel served notice of retainer and demanded copy of the Bar Association report, which was not served and was not made part of the record.

On September 14, 1909, respondent filed a general and special demurrer to the petition (pp. 146-51).

On September 16, 1909, the Friends of the Court filed a *statement*, addressed to the Court (pp. 151-2), that

> *"respondent's so-called demurrer shows no cause why the prayer of the petition heretofore filed in this matter should not be granted"* and further because *"no answer to the charges in said petition contained having been made, said George W. Radford should be forthwith disbarred as in said petition prayed for."*

On the same day respondent gave notice (p. 152) of the hearing of the demurrer on September 18, 1909.

On September 25, 1909, said demurrer was argued and overruled by an order entered on said day (p. 153), and in said order the Court required the respondent to *answer within ten days* and *"in default thereof said respondent be disbarred, etc., in accordance with the prayer of the petition."*

In passing it is deemed proper to note that by this order, without any legal proof of any act for which the Court had power to disbar upon charges made upon information and belief only, the respondent was ordered disbarred and disgraced in default of filing an answer. This was in violation of the most fundamental *"principles of right and justice." "Charges in disbarment proceedings must be proved after default"*—Re Walkey, 26 Col., 161.

Therenpon, on October 1, 1909, respondent applied to the Supreme Court of Michigan for writ of certiorari.

On October 27, 1909, pending the above proceedings, Messrs. Charles T. Wilkins and Charles W. Casgrain resigned as Friends of the Court.

On December 10, 1909, respondent's petition for certiorari was denied by the Supreme Court on the ground that the proceeding was not an action at law and that the Supreme Court would not review the order overruling the demurrer until final determination of the proceedings in the court below. In re Radford, 159 Mich., 91.

On December 15, 1909, Messrs. Charles A. Kent and William G. Fitzpatrick were appointed friends of the court.

On December 23, 1909, respondent's answer to the charges was filed, the answer including exhibits covers pp. 156-243 of the record.

On March 14, 1910, the taking of proofs was commenced before Judge Rohnert. Attention is called to the opening statement of Mr. Fitzpatrick, which shows that the allegation of the petition for writ of certiorari that certain of the charges had been withdrawn and abandoned was true; that by said opening statement, as to the charges and scope of the proof was confined to certain charges and limits (opening statement, pp. 244-7).

Special attention is called to the colloquy between the Court, Hon. Morse Rohnert, and respective counsel relative to Judge Rohnert's supervision over the proofs (pp. 247-8 of record):

> "Mr. Weadock: I ask your Honor if you have read the petition in this case. It is quite lengthy, being some hundred pages.
>
> The Court: I have not read it since it was handed to me. I don't know whether I have a copy or not now. I have not any copy of it. * * *
>
> The Court: It is not the intention of the court now to go into the serious consideration of the merits of the controversy. The purpose is now to put in the proof and after the proofs are put in to have them submitted to the judges who will hear the case, and have the matter argued at that time. So the court now will not be concerned so much with the character of the controversy or the particular nature of the accusation. *The Court will not exclude any testimony*, but will simply note the objections, so that the judges who hear the matter, may determine upon that point when they come to hear it.
>
> Mr. Kent: May I ask whether the argument of the objections will follow immediately upon the taking of the testimony?

The Court: Undoubtedly not, because the judges will want some time to go over the pleadings and the testimony. There may be three or four weeks before they hear the argument. We will just take the proofs now.

Mr. Weadock: I think a full statement of the pleadings will avoid very much of the proof that may otherwise be necessary. There are a great many things that there is no dispute about.

The Court: *I am not going to restrict the proof.*

Mr. Weadock: We object to any proof being received under this petition upon the same ground stated in our objections here. I apprehend it will not be necessary to take formal objections and exceptions.

The Court: I think the objection should be made. The exception will stand on each objection. I think the record should disclose the objections that are made."

Thereupon the Friends of the Court introduced in evidence a very large number of bulky files and records in various legal proceedings, many of which were not mentioned or referred to in their petition, and to which respondent was not a party; and voluminous typewritten, stenographic transcripts of testimony taken in other cases; respondents counsel made numerous legal objections to the admission of said testimony, but the circuit judge refused to rule upon the relevancy, competency or admissibility of said testimony; that thousands of pages of closely type written matter were thus dumped bodily into the record. The friends of the court declined to point out any particular part or parts of such records and transcripts upon which they relied, stating (pp. 400-401):

"I think we may proceed to put it all in here and later on; any irrelevant portion can be stricken out of the record or left out on objection to questions and answers. * * * I must decline to limit it to any particular portion. Obviously this proof will only be competent in so far as it supports our position, but I cannot stop now to pick it out."

Another instance appears on p. 648, as follows:

> "The Court: I am only interested in view of the volume of testimony that is piling up in this case, that if the judges read it through, it will make a lot of work that is not necessary. It will not be necessary for an understanding of the issues in this case. If it is necessary for the judges to go through the testimony in detail, to find out what tangible testimony is in it, I don't want the record lumbered up with a lot of testimony that is not pertinent to the issue.
>
> Mr. Weadock: I have been confining the questions to that very idea.
>
> The Court: All this record comes in, but it does not go in for the purpose of having them read it. We shall insist that Mr. Fitzpatrick point out in each case what testimony he relies upon, and upon what points. The Court will be bound by the statement that Mr. Fitzpatrick makes.
>
> Mr. Weadock: That is what I asked should be done several days ago; I asked them to present a brief of the testimony, which would avoid lengthening out the case at that time.
>
> The Court: You can file your brief later on."

The portions of testimony thus admitted in evidence were first selected after the argument and decision of the case and attached by the judges to their answer to the writ of certiorari and comprises pp. 249-679, both inclusive of the record.

Special attention is called to the record (p. 679 to the date, "June 12, 1905, 9:30 a. m.," on p. 685), from which it appears that the friends of the court, after offering the mass of transcripts, files and records, closed their case (p. 679); that respondent's counsel then moved to dismiss the proceedings for the reason that the charges had not been sustained in any particular, and that the testimony before the Court would not authorize the Court to make the order asked in the petition; and suggested that, before the motion should be argued, the friends of the court should

be required to point out what charges they relied upon and claimed had been sustained; that they should point out what testimony supported those charges; that respondent should not be called upon to meet any such mass of testimony as had been admitted without some specification or information; that the court denied the motion, assigning the reason that the "matter will be taken up by the judges who sit in the case and will pass upon whatever testimony is in;" also stating to respondent's counsel: *"If you rest I will close the case and take it up with the judges. I think the testimony in this case should be taken like that in any chancery case."* The friends of the court declined to make any specification whatever unless respondent closed his case. This refusal was made specifically to the Myers case, the Dean case, the Chesebrough Estate case, and after such declination respondent's counsel renewed the motion, the Court refusing to hear any argument on the matter and directing the respondent to proceed with his proofs. In the midst of the discussion the Court took a recess, after which a further and more extended colloquy upon the question took place, the Court again refusing to rule upon the admissibility of the testimony, and refusing to require the friends of the court to point out the testimony they relied upon, or to hear arguments and pass upon respondent's motion to dismiss; whereupon respondent's counsel declined to proceed until the motion had been passed upon by the three judges. The court then declared the testimony closed and further stated (pp. 684-5):

> "I shall have the stenographer write up a copy for each of the judges; if you desire you can have it done at the same time. It will probably take a short time to prepare that testimony. As soon as it is prepared I want a statement from each side: first, of the charges upon which they rely, also a statement of the facts substantiating those charges and a reference in that statement to the testimony which establishes those facts together with an argument upon the effect of those facts upon the case. Also a discussion of the legal proposition involved."

Respondent's counsel duly excepted to all of the rulings of the court.

Attention is now called to paragraph 15 (p. 5, R.), respondent's petition for issuance of writ of certiorari to the Supreme Court and to the answer to said paragraph (p. 29, R.), from which it appears that on June 12, 1910, at 10 o'clock in the forenoon, respondent's counsel was served with a schedule of the evidence and statement of election by the Friends of the Court on the charges upon which they relied and of the charges waived, with one hour's notice to appear in court and have a time fixed for argument, and respondent's counsel hereby contends that on said day Judge Mandell stated: "The motion to dismiss is denied." The stenographer's minutes, however, does not contain those words, nor any ruling upon the motion by the three judges, and the Court heard no argument upon it. The stenographer's minutes appear on pp. 685-91, both inclusive, to which attention is called and from which it appears that after an extended colloquy the judges retired for a consultation concerning the record of the proceedings on March 18th heretofore cited. Upon their return to the court room, Judge Mandell spoke for the Court, as appears on pp. 690-91, ending with making the following order:

> "The Court will order now that the taking of proof *proceed to-morrow morning* at the opening of court, before Judge Rohnert and proceed to a final conclusion, and the Court further have considered and now orders *that one week from today will be given the friends of the court in which to file and serve copies of their brief upon the attorneys for the respondent*, and that one week from that day will be given to the respondent to file and serve his brief, and that the Court will not be expected to pay any attention to any briefs that are not filed within that time. *The whole matter will be taken up and disposed of on the first of July.*"

Special attention is called to the language preceding and following such order, and that the language of such order

was equivalent to denying the respondent's motion to dismiss without argument.

The taking of respondent's testimony occupied eight daily sessions of the Court, June 16 to 27, inclusive, about half of which time was spent in cross-examination of respondent. Said testimony will be found on pp. 692-1174.

Said order was not complied with by the friends of the Court as to serving their brief required thereby, which was served June 27 at the close of the proofs (p. 1170) leaving only four days for respondent's brief, according to the order, before argument, notwithstanding which the said judges required the argument of said cause on the day fixed, July 1, 1910, before any of respondent's proofs had been transcribed by the stenographer, and before said Judges Mandell and Murfin knew what was shown thereby. Said judges in paragraphs 12-13, pp. 30-32, in their answer to respondent's petition for writ of certiorari to the Supreme Court, admit that at the time of the argument of said cause on July 1, 1910, the testimony and proofs of respondent taken on June 16-27, had not been transcribed by the stenographer, but denied that they proceeded to the hearing of said argument without knowing what was shown in a general way by said testimony; that said testimony had been taken before one of their number, namely, Hon. Morse Rohnert, who was at that time familiar with the purport and effect of the same, and further, that the respondent judges had before them a transcript of the testimony taken in March, 1910. On p. 32, they admit that "the testimony as taken was written out by the stenographers who took the same on or about July 15, 1910, and that two copies of the same were made, one being delivered to the friends of the court and the other to one of these respondents on or about July 16, 1910. The record further shows that notwithstanding the great bulk of said testimony, that four days after the delivery of the copy thereof to one of the judges of said court, on July 16, the opinion of the three judges, delivered by Judge Murfin, was filed on July 20, 1910, ordering the disbarment of the respondent. The record also shows (p. 23) that on August 5, 1910, there was not in the files of said cause any

of the testimony introduced therein, and that there was no entry upon the calendar showing that any of said testimony had been filed; and on the following day the respondent's petition for certiorari was sworn to and forwarded to the Supreme Court of Michigan.

During the taking of respondent's testimony Mr. Fitzpatrick, friend of the court, demanded that respondent produce certain statements of account which were in preparation at the close of respondent's oral proofs. On pp. 1114 and 1169 this Honorable Court will find references thereto and the refusal of the trial court to permit their completion and production, although evidence was given of the impossibility of completing said account earlier. Immediately following such refusal of the Court, on pp. 1169-70, is Mr. Fitzpatrick's excuse for not completing the brief of the friends of the court owing to the *"exigencies of this hearing."*

Newspaper Attacks.

Attention is now called to pp. 156-173 of the State record, being the first 17 pages of respondent's answer to the charges in this matter, showing the newspaper attacks on this respondent and the cause thereof, said attacks being confined to the Detroit Journal and commencing in July, 1908, and being continued through all of the proceedings in this matter. They were always garbled and almost wholly untrue. Frequently in relation to the proceedings herein the publications in the Detroit Journal were made hours before they were filed in court. This was particularly true of the petition herein filed on September 4, 1909. During the taking of the testimony by the friends of the court in March, 1910, attention was called by respondent's counsel to the articles appearing in the Detroit Journal—a report of a particular instance appears on pp. 391-2 R. The article complained of appeared on Saturday, March 12th, headed *"To End Radford Delays,"* • • • "There have been too many delays," said Judge Rohnert, "I cannot stand for any more; the case will start Monday morning if Mr. Weadock is here, and if he is not it will start Monday morning

just the same." The Court took no action, saying: "This Court will not be guided by newspapers." Respondent's testimony on pp. 692-4 relates to the newspaper notoriety and respondent's health and their effect, and on pp. 980-1 will be found his evidence as to the effect of these attacks upon his financial condition. On pp. 1008-09, scrap books of newspaper attacks were produced, identified and admitted in evidence.

It is submitted that the publications in the Detroit Journal were not irrelevant matters. They were the instigation of these proceedings up to the time they came into court. These reports did not tend to show respondent's bad reputation—*they created that bad reputation.* The public forms its ideas from the sensational, lying headlines in the sensational papers, which always create much feeling and prejudice against the citizen so attacked. In this case the attack was so malicious that it was absolutely necessary to bring before this Honorable Court the inception, inspiration and history thereof in order to show the prejudicial atmosphere which surrounded the state courts throughout the conduct of the proceedings in question. And it is submitted that the procedure on the trial as hereinbefore shown, taken in connection with the consideration of the various remarks of the Court, especially those of Judge Mandell on pp. 690-1, together with the peremptory order made at that time, must lead to the conclusion that the Court was influenced, consciously or unconsciously, by the newspaper agitation. This, we submit, is equally true of the abrupt close of the proofs on June 27th without permitting respondent to complete statements of account that had been demanded by the friends of the court, and the forcing the case to argument on July 1st without respondent's testimony before the Court for consideration * * * or briefs furnished by the friends of the court pursuant to the order of June 12th.

We feel confident that this Honorable Court will fully appreciate counsel's feeling of delicacy in commenting upon the action of the trial court, as disclosed by the record, beyond giving expression to our deep conviction that respondent did not have the calm, fair and impartial judicial

hearing in the Michigan courts to which "under the principles of right and justice" he was entitled.

As to the proceedings in the Supreme Court of the State of Michigan, although that court in the opinion of Mr. Justice Stone recited the fact that the petition was verified upon information and belief, and set forth the specifications which were deemed material, and the filing of the opinion, findings and judgment of the trial court, and the errors assigned in respondent's application for writ of certiorari. The Supreme Court in the following language confined itself to the questions of law:

> "It is well that we keep in mind the fact that this case is before us on certiorari under the provisions of Sec. 10,497, C. L., and that it has been often held that the office of a certiorari is not to review questions of fact but questions of law; and that, in examining into the facts, the appellate court does so, not to determine whether the probabilities preponderate one way or the other, but simply to determine whether the evidence is such as to justify the finding as a legitimate inference from the facts proved, whether that inference would or would not have been drawn by the appellate tribunal."

II.

INFIRMITY OF PROOF AS TO FACTS FOUND.

As has already been shown, certain of the charges were abandoned on the hearing of the demurrer, others upon the filing of the statement of election by the friends of the court of the charges upon which they would rely, and statement of charges, etc., waived, as appears on p. 5 of the record. Also by the opening statement of the friends of the court on pp. 244-7, in which the charges were confined to comparatively narrow limits.

Opinion of Circuit Judges.

In the opening paragraph of the opinion of the Circuit Judges, pp. 12-13, Exhibit C, appears the following:

> "In general the charges refer to his actions in connection with the Chesebrough, with the Oxnard Estate, the Dean litigation, so-called, and the Myers litigation. In view of the conclusion reached by the Court it becomes unnecessary to analyze and discuss in detail the respondent's connection in all these matters; this because in the opinion of the court his conduct in connection with the Oxnard Estate is alone ample warrant for the institution of these proceedings. * * * It is unnecessary to consider whether under Section 11,610 of the Compiled Laws his conduct amounts to embezzlement."

(11,610) C. L., 1897. The statute reads:

> Section 1. *The people of the State of Michigan enact,* That if any general or special administrator or any executor or guardian, who has been appointed by a judge of probate and who has collected any goods, chattels, money or effects of the deceased or ward, and *wilfully appropriated the same to his own use* and who has been ordered by the judge of probate, forthwith to deliver to his successor in trust, ward or any person lawfully entitled thereto, all the goods, chattels, money or effects of the deceased or ward in his hands, shall *wilfully omit, neglect or refuse for sixty days to obey said orders,* he shall be deemed to have committed the crime of embezzlement, and shall, upon conviction thereof, be imprisoned in the state prison for not more than five years, or by fine not exceeding two thousand dollars, or imprisonment in the county jail not more than one year: Provided, That in case such order shall be appealed from, said period of sixty days shall be reckoned from the affirmance of the order in the circuit or supreme court."

There was no evidence of wilful misconduct or of criminal intent.

Without a criminal intent, there is no embezzlement.

People v. Ballard, 55 Mich., 628.
People v. Hurst, 62 Mich., 276.
People v. Wadsworth, 63 Mich., 500.

The charge of embezzlement was wholly abandoned by the friends of the court in the opening statement (p. 246).

The opinion of the Circuit Court was therefore confined to the Oxnard matter.

Opinion of Supreme Court.

The opinion of the Supreme Court contains the following:

> "It is significant that in each of the cases in which the respondent is charged with unprofessional conduct in the petition, he managed to get the legal title of his cestui que trustent clients into his own name as absolute owner thereof."

It is submitted that the record is a complete refutation of the above general statement in the opinion of the Supreme Court, and but for that statement it would be unnecessary to make any extended review of any other than the Oxnard matter, or to the Chesebrough Estate matter except as connected with the Oxnard Estate matter. Only brief mention is required of either the Dean case or the Myers case. These several matters will be presented in the following order:

I. Dean Case.
II. Myers Case.
III. Chesebrough Estate Case.
IV. Oxnard Estate Case.

Dean Case.

In his opening, Mr. Fitzpatrick stated:

> "We shall confine ourselves solely to proof of the claim that Mr. Radford knowingly and intentionally claims that paper which was executed in the form of a deed was in fact and truth a deed, whereas it has been determined by the Supreme Court on appeal; finally the instrument was and must have been intended by the parties to have been a mortgage."

The only evidence offered in this case by the friends of the court is found on pp. 511-562 of the record, and consists of the amended bill of complaint in Edgar S. Dean v. George W. Radford (p. 511), the answer of respondent thereto (p. 523), decree of the Circuit Court (p. 554), and decree of the Supreme Court on cross-appeals (p. 558).

It is submitted that the above documents do not bear out any of the charges or references thereto by either the Circuit or Supreme Courts in this matter. The Supreme Court did not decide that the deed was intended by the parties to have been a mortgage, as stated in the opening statement. The Supreme Court based its decision on what it found to be the value of the property, and held: "In any aspect of the case, this deed ought to be treated as a mortgage." Respondent's answer to the Dean charegs will be found on p. 196, paragraphs 13 to 205, and exhibits thereto, Nos. 8 and 9, on pp. 241-3. The oral testimony of respondent on pp. 695-704, which was not disputed by any witness, and it is submitted that the foregoing is a complete refutation of all charges in the Dean matter, and further shows that Judge Hosmer, who heard both the case of Dean v. Radford and May v. Dean, in the latter case completely exonerated the respondent.

Judge Hosmer was not called as a witness in contradiction of this assertion.

Further comment upon that case we deem entirely unnecessary.

Myers Case.

The charges in the Myers case will be found on pp. 122-126, under Charge 3, specifications a, b, c, d, e and f. All of these specifications except a and b were abandoned by the written waiver of the friends of the court filed June 10, 1910 (p. 5, R.)

When the proofs were taken beginning March 14, 1910, the Myers litigation was pending on appeal in the Supreme Court of Michigan, and in their opening statement (p. 246), the friends of the court confined themselves to the proof of specification a.

Respondent's answer to the Myers charge is found on pp. 187-196, and his denial of said charges on pp. 209-211, and the Myers exhibits attached to said answer, Nos. 3, 4, 5, 6 and 7, on pp. 618-24. The evidence introduced by the friends of the court in support of the Myers charges was mostly documentary, consisting of files and records in the Circuit Court for the County of Wayne and in the United States Circuit Court for the Middle District of Pennsylvania, covering pp. 449-505, and the testimony of Mr. Latham, pp. 563-578. Respondent's testimony will be found on pp. 758-772.

At the time of the hearing in this matter in the Circuit Court the Myers case was pending on appeal in the Supreme Court of Michigan, as shown by the opening statement of the friends of the court. The entire case resolved itself into one question, and that was, the amount of respondent's fee. Specification a, that respondent wilfully and wrongfully abused the relation of attorney and client and sought to defraud E. E. Myers by procuring an assignment of a half interest from George W. Myers, was contradicted by the record.

The entire controversy in the case of Elijah E. Myers v. George W. Radford, resolves itself down to Mr. Radford's fees. He charged $4,000 against Mr. Myers for the trying of what were practically five law suits requiring his absence from his office and from the City of Detroit thirty-three days in a cause which was very uncertain for a client

who could not advance even the disbursements necessary to make the fight, and who already owed Mr. Radford nearly $5,000, and in which the attorneys associated with him were paid $2,000 without any complaint on the part of anyone. And yet the first friends of the court in this matter *charged* $2,705 *for preparing the petition for disbarment* and making a brief in answer to the respondent's application for certiorari to the Supreme Court, and Hon. Alfred J. Murphy, who tried the Myers case, and allowed a fee of one thousand dollars to Mr. Radford in that case, declined to express an opinion on the amount of Mr. Wilkins' bill (R., 733), which was $2,205 (R., 730-731).

Extended discussion of this matter need not be made here because the entire record in the Myers case was before this Honorable Court in Radford v. Myers, 231 U. S., 725.

In passing we deem it proper to call attention to the answer of the respondent to the order to show cause in this proceeding in this court, from which it appears, on p. 8, that the Myers decree against him has been paid, after its review and affirmance in this Honorable Court. Therefore, having had the entire Myers record before it, this Court can determine whether any question in that case furnished any cause or reason for disbarment.

Chesebrough Case.

The charges against respondent in the Chesebrough matter are in the petition of the friends of the court commingled with the charges in the Oxnard Estate, but the special specifications with reference thereto in Charge II will be found on pp. 121-2 of the record. They are in substance that respondent asserted and claimed absolute ownership in himself to real estate at Number 171 Fort Street West, Detroit, and violated the trust under which he secured and held title thereto. Those charges and specifications are denied in respondent's answer on p. 185 and at the top of p. 209.

The friends of the court, on p. 314, offered in evidence the entire probate files in the matter if the estates of Alfred and Francis E. Chesebrough, of both of which George L. Chesebrough was administrator with the will annexed, extending from pp. 314 to 391, R., and covering the period of time from 1896 to and including 1900. They refused to point out the portions of this mass of files upon which they relied to show the creation of the alleged trust or the violation thereof.

On pp. 506-511 appears the introduction of certain unrecorded deeds that never went into effect, from George L. Chesebrough, and two of his brothers and a sister, to respondent "trustee," covering the Chesebrough real estate in question; a letter from respondent "approved" by George L. Chesebrough, dated May 21, 1900, written to John H. Avery of Detroit. The friends of the court based their allegations of the trust on these papers.

Exhibit L, pp. 508-509, the letter referred to, provides:

> "It is proposed to proceed to clear up the title to the above property by administrator's sale and my bidding in the same. When it is understood that I shall hold said property in trust to first secure myself for money advanced to purchase claims, tax titles, expenses, and services estimated at about $2,500; second, unpaid taxes as above; third, to secure you for indebtedness of George L. Chesebrough to you, which I understand with loan you are to make him today, will be about $5,500. * * * It is understood that as soon as legal proceedings are completed, a declaration of trust is to be made by me, covering the exact situation and figures as established thereby."

The above clearly provides that the "trust" above proposed was to secure respondent and John H. Avery and not the trust *charges*.

It is now intended to show that the *proposed* "trust" was never even consummated, and why?

The record, pp. 331-337, shows that on April 24, 1899, George L. Chesebrough as Administrator, petitioned the Probate Court for license to sell the real estate in question (pp. 331-2); that license was granted February 9, 1900 (pp. 333-4); that sale was reported under said license by the administrator on July 7, 1900, to respondent "trustee" subject to all unpaid taxes thereon (pp. 334-6) that on October 10, 1900, said *sale was set aside* and a new sale ordered (p. 337). This was done upon respondent's own motion, on the ground that as he had acted as attorney for Chesebrough, the administrator, who could not buy at his own sale, the sale to respondent would not be good (p. 711). The proposed trust was then abandoned in all respects for the further reasons: Chesebrough failed to get deeds from the widow and heirs of his deceased brother, William G. L. Chesebrough, and Avery refused to make the loan referred to in Exhibit L.

A new sale of the real estate was advertised by the administrator, George L. Chesebrough, and on November 24, 1900, the interest of the Estate in the property was sold to James B. Swan subject to taxes as before for $5,900 (pp. 338-9). This sale was reported to and confirmed by the Probate Court December 15, 1900 (pp. 340-41), and an administrator's deed executed and delivered to Swan on December 29, 1900 (p. 396). James B. Swan was an employee of John H. Avery. This sale was made with the understanding that Avery and Chesebrough would take the property and pay respondent the amount due him for services, advances to pay taxes, and purchase of claims against the Estate, etc. (p. 711); but Avery finally refused to carry out that agreement. The matter ran along until July, 1901, when respondent notified Chesebrough by letter that he would take proceedings to protect himself; then Chesebrough came to Detroit; Avery was interviewed but refused to do anything. A few days afterwards an arrangement was made whereby Swan, on July 9, 1901, made a deed (p. 396) of the property to respondent, who was to hold the deeds as his protection to see if Chesebrough and Avery could pay up (p. 714). After that, respondent held the deeds over a year to see if he could get out of the entire matter, and

made offers of reduction to do so (p. 714). Finally respondent was forced to take the property (p. 724), and placed the deeds on record on September 26, 1902 (p. 396).

John H. Avery, to whom George L. Chesebrough had long been indebted, was represented throughout the whole matter by Gray & Gray (William J. and Robert T.); they had also represented certain creditors of the two Chesebrough Estates.

Attention is called to the letter of William J. Gray to respondent (p. 509), under date of November 29, 1901, in which he speaks of respondent holding the title in trust; first, to pay himself for advancements and services; second, to pay the taxes outstanding; and third, to pay Mr. Avery on account of Chesebrough's indebtedness; that Avery declined to make any advancement for the purpose of protecting the property against being lost for taxes.

The letter states:

> "It is for you to say whether or not you care to do so, in protection of your claim, and in protection of Mr. Chesebrough's *possible equity*"

and suggests

> "an accounting of the Estate, so that if there is anything coming to the creditors he (Avery) should get it."

(The purpose of this brief is not that of an accounting, otherwise we should review the evidence showing Mr. Gray's errors as to figures).

Following the suggestion as to an accounting of the Estate, George L. Chesebrough's final account was filed December 2, 1901, and allowed January 20, 1902 (pp. 341-6). He never made any effort to comply with the order of the Court for final distribution or to settle with respondent in any manner.

This left the burden upon respondent to take over the title to the property subject to unpaid taxes, to protect his claims and of Mr. Chesebrough's "possible equity," after he (Chesebrough) had accounted to Avery as a creditor of the estate, as Mr. William J. Gray put it.

Accordingly, and acting on the suggestion and with the full knowledge of George L. Chesebrough, respondent, in order to pay off the outstanding taxes and make extensive, necessary repairs upon the property for renting, on September 26, 1902, gave a mortgage to the Springfield Savings Bank for $5,000. This sum was nearly all used for the purpose for which it was given. Chesebrough made promises but never came forward with settlement with respondent, not only for the large amount due him from the estate, but for other loans and indebtedness for services, as appears by Chesebrough's letters. And in 1908, after the attacks were commenced in the papers against respondent, Chesebrough came to Detroit, called on respondent at his house while he was sick, and told respondent,—whose testimony is uncontradicted.

> "that as matters were going with him, he (Chesebrough) did not see how it would be possible for him to do anything at all." Vide R., pp. 705-748.

The foregoing resume of the Chesebrough Estates is not contradicted by George L. Chesebrough's evidence which will be found on pp. 570-664, at the close of which the Court, Judge Rohnert summarizes his *mis*understanding of the whole matter as follows:

> "The Court: The question is: How much was the Estate owing at the time of the sale, that had to be taken care of. The attempt was, to hold this property as trustee, to take care of these matters, then later on, to hold it as trustee for the purpose of certain things, and turn over the balance to the heirs, if there was anything left, instead of Mr. Avery doing it, Mr. Radford did it. He bought the property as trustee and raised $5,000 to take care of some things. What was there owing by the Estate to Radford? What was the amount of back taxes, what was the

amount of Mr. Chesebrough's claim? The question is: where is that $5,000 to-day, and what was done with it, as far as Mr. Chesebrough is concerned; that is the situation, as far as Mr. Chesebrough is concerned."

It is evident from the above statement of the Court that his understanding of the Chesebrough matter was at least confused. But one thing is certain, it contains no hint of any wrong doing or of any basis whatever for the charges made. With this situation disclosed at the end of Chesebrough's testimony, let us see what followed.

Mr. Robert T. Gray followed Chesebrough as a witness (pp. 665-679). The direct examination of Mr. Gray shows that he was called for the purpose of sustaining the charge that respondent had asserted absolute title to the Fort Sreet property, and that that statement was made in February or March, 1909 (p. 666). His examination developed the following facts: that he was seeking to get whatever there was in the property over and above respondent's claims to apply on George L. Chesebrough's debt to John H. Avery. On p. 670 he testified that he did considerable work for Mr. Chesebrough in looking up his account against Mr. Radford in connection with the Fort Street property, and that he told him that one way to get the account was to file a bill for an accounting; that he exacted a retainer; that he held Chesebrough's check three or four months, sending it back to him unused, and told him there was too much work involved and that he did not want to go into it. On p. 671 he admits general knowledge of the relation between Avery and Chesebrough and that the proposed arrangements were not carried out by Mr. Avery, and that the property was turned back by Mr. Swan under his brother's recommendation. On p. 673 he admits that at the time he had the talk with Mr. Radford the newspapers had been publishing articles, both before and after the interview; that in a general way he was familiar with the newspaper statements; that when Chesebrough spoke first with reference to the Fort Street property he understood he had an interest in that subject to taxes and expenses paid by Mr.

Radford. He (Chesebrough) claimed that the title had been handled by Mr. Radford and himself in the interest of clearing the property and saving it for them, and that they, Gray & Gray and Avery knew how the title was made by administrator's sale to pay debts (p. 673); that if Mr. Chesebrough realized anything from it the general understanding was that Mr. Avery should benefit by any residue. He knew, that before Avery could get anything that the property had to pay the other claims against the Estate, expenses of administration, taxes and other liens against the property; that any proper claims that anybody had against it should be allowed first (p. 674); that he could not give the conversation as it took place; he knew Mr. Radford wanted to know from him what Mr. Chesebrough claimed with regard to the Fort Street property (p. 675); he knew that Avery did not go ahead with the arrangements under the advice of his brother and himself and refused to put any money into it (p. 677); he knew the Springfield Savings Bonk mortgage was in process of foreclosure at the time he testified, although he did not think the proceedings had been commenced at the time of the interview between himself and Mr. Radford. The fact was that the Springfield Savings Bank filed its bill to foreclose the mortgage on the Fort Street property in May, 1909. On February 21, 1910, decree of foreclosure was entered for $5,219.90. The property was sold under the decree April 22, 1910, redemption expiring six months from that date (pp. 446-7).

Especial attention is called to the following testimony of Mr. Gray on p. 677:

> "Q. Did you know of the foreclosure of the mortgage, the proceedings to foreclose the mortgage given by Radford?
>
> A. I don't think the proceedings had been commenced at the time.
>
> Q. Well, you knew of them afterwards?
>
> A. Yes.
>
> Q. And did you ever intervene in that suit for Mr. Chesebrough?
>
> A. We did not intervene.

Q. Was it not—why not, if he had an interest, and Mr. Avery had one, why did you not intervene?

A. I saw no special advantage in it, and I do not now.

Q. Why not?

A. The claim of the insurance company—I think the Savings Bank it was—that is, the first mortgage. I considered that that was a proper lien, and that they could foreclose their mortgage if they saw fit to do so.

Q. What about the surplus?

Mr. Fitzpatrick: *If there is any we can go after that.*

A. I have not given any consideration to that one way or another.

Q. You knew about it?

A. Yes.

Q. You knew of the foreclosure?

A. Yes.

Q. You know the foreclosure is pending now?

A. Yes. That is, Mr. Chesebrough knows of the foreclosure pending. I have been informed of it on more than one occasion."

It is submitted that the foregoing clearly shows that the witness's testimony was of the most general character, that his cross-examination completely nullifies his statement that respondent claimed absolute title to the Fort Street property; that he appeared in a dual capacity, more in the interest of Avery than of Chesebrough; that he was familiar with the past history of the Chesebrough Estate; that the property had been sold to pay debts; that after the refusal of Avery to carry out his agreement and the property was turned back by Swan to Mr. Radford that it was held by him as security for his own claims, services, etc.; that he had made considerable investigation of the Estate accounts, and after that investigation had advised Chesebrough that his remedy was by bill for an accounting, and after receiving the check for retainer he returned it unused because

there was too much work involved and he did not want to go into it; that he knew of the mortgage; that it was a proper claim; that both he and Chesebrough permitted the foreclosure to proceed without intervention either by bill for an accounting or leave to redeem. They were not even interested to see whether there would be any surplus from the foreclosure sale. It follows that the respondent's testimony that he was forced to take the property as a matter of self-protection, was true precisely as stated in his answer to the charges which were wholly false under the undisputed facts.

It is finally submitted as to the Chesebrough charges that they were entirely disproved by the proofs on the part of the friends of the court, which proofs clearly show that they form no basis whatever for disbarment.

Oxnard Estate.

The opinion of the Circuit Court for the County of Wayne (1174-8 R.), contains the only primary review or analysis of the facts upon which the order for disbarment was based; and that opinion, with the slight mention of the other charges, is devoted to the Oxnard Estate proceedings in the Probate Court, and based upon the assumed legality and justness of the findings and orders of that court, which is purely a statutory court, without any common law or equitable jurisdiction, and therefore without jurisdiction or the power, as we shall show, to make the orders which were made in the Oxnard Estate. And therefore they cannot form any basis for disbarment.

We therefore ask attention to the following intrinsic consideration of the Oxnard Estate record in the Probate Court, and in the chancery division of the Circuit Court for the County of Wayne for the purpose of ascertaining whether "under the principles of right and justice" the Probate Court proceedings furnished any sufficient cause for the disbarment proceedings; also whether they disclose any "grave reason" * * * "which should convince" this hon-

orable court that to allow the natural consequences of the judgment of disbarment to have their effect would be wrong and unjust.

Oxnard Will.

John E. Oxnard deceased November 26, 1899, leaving a will executed March 6, 1897, and duly probated in the Probate Court for the County of Wayne, January 2, 1900 (pp. 255-6) before the same probate judge who subsequently made the probate orders in question relating to respondent's account.

The will was not offered in evidence by the friends of the court, but *it appears in the record in two places,* namely, as Exhibit 1 to respondent's answer to the charges (pp. 212-215), and as Exhibit A (pp. 795-797) to respondent's bill in chancery (pp. 783-804) to which reference has been made and which will later be discussed in detail. *The will and complainant's bill in chancery were not considered at all by the state courts.*

Respondent submits, that the will of Mr. Oxnard, in which he was named as executor and trustee, must control all questions relating to the corpus of the estate, over which the Probate Court had jurisdiction, and as to which its orders were binding upon respondent as executor thereof. We therefore propose now to present the important paragraphs thereof, following each with such comments as we deem proper as to construction thereof; and the legal questions arising in connection therewith so far as the same may have a bearing upon the questions here involved.

Will. Second clause (p. 213):

> "Second. I do hereby authorize my executor hereinafter named to sell or lease any or all of the property of which I may die, seized or possessed; such sales may be either private or at public auction, and upon such terms as he may deem proper in his discretion, and to give to the purchasers thereof good

and sufficient deeds of all real estate and bills of sale of all personal property, and to invest the proceeds thereof in such manner as he may deem best to preserve my estate for the purposes herein named."

It is submitted that a mere reading of the above clause makes clear the following: (a) the testator's complete confidence in respondent's ability, honesty and discretion as to both sales and investment of the proceeds for the purposes of his will; (b) that the condition of the estate was such that sales would be necessary; (c) that the executor could act both as to sales and investments without application to any court: from which it follows that the Probate Court could not set aside either the sales or investments; and indeed, as will be shown later, the Probate Court refused to consider the sales or the investments at all, and shut out an extended inquiry on those subjects.

While we do not contend that the good faith and honesty of the sales and investments might not have become the proper subject of judicial inquiry, in a proper action between the legatees and the executor, yet we do contend that when the probate court refused to go into those questions, and the friends of the court based their charges upon the orders of the probate court as to non-payment of the amount found, all charges of fraud as to sales and investments in the disbarment proceeding must fall. In other words, in the face of the provisions of the second clause of the will, such charges cannot lawfully form the basis in the first instance of disbarment proceedings. But respondent in his bill aforementioned invited an investigation of all those questions, but the legatees being fully satisfied by the probate orders, by dilatory and evasive pleas sought to evade all such investigation, as we shall also show later.

We content ourselves with the citation of one case upon the legal phases of question of Sales and Investments, Curtis v. Brewer, 140 Mich., 139.

In which the Supreme Court held:

> "The statute (§9095-3, Comp. Laws), providing that executors may not purchase lands sold by them, does not prevent a purchase by an executor expressly authorized by the will."

Thus recognizing the right of the testator to make the will in question with its broad powers of sale and investment.

Will. Third clause (p. 213):

> "Third. After the payment of all my just debts, funeral expenses and expenses of administration of my estate, I give, devise and bequeath all the rest and residue of my estate to my beloved wife, Elizabeth C. Oxnard, and my beloved daughters, Florence Stuart Oxnard and Mabel Oxnard, in equal proportions, each to receive one-third thereof; and *I direct that in making such division, all insurance upon my life, whether payable to my estate or to my said daughters, shall be taken into consideration in making up the total of my estate for such division.*"

Again, a reading of this clause we contend establishes the following testamentary facts and directions: (a) that the wife's one-third of the residue was to come entirely out of the corpus of the estate and that she was not to be paid any of the insurance payable to the daughters; (b) that none of the insurance was payable to the wife; (c) that all of the insurance was payable to the two daughters; (d) that the wife was to be paid out of the estate funds one-third of the total of the estate with the insurance added thereto; (d) that the balance of the estate should be divided equally between the two daughters (to be held in trust by the executor according to the sixth paragraph on pp. 213-14, which need not be copied here); and (e) that the testator did not assume to dispose of the insurance, which remained the sole property of the daughters.

While the expression in this clause devising the residue of the estate between the wife and two daughters "in equal

portions, each to receive one-third thereof," at first reading seems somewhat ambiguous, yet when taken in connection with the final provision of the clause relating to the insurance, we submit the ambiguity disappears.

Will. Fourth clause (p. 213):

> "Fourth. I hereby direct that the foregoing bequest to my wife, Elizabeth C. Oxnard, shall be in lieu of dower and also in lieu of any and all allowances which may be made to her for support pending the settlement of my estate."

This clause clearly limits the wife's share to *one-third of the estate.*

Will. Fifth clause (p. 213):

> "Fifth. In case either of my said daughters should die without leaving issue her surviving, and after my death and prior to the distribution of my estate, I direct that the share herein devised to her shall be equally divided between her surviving sister and my wife, Elizabeth C. Oxnard."

Again, this clause limits the wife's bequest wholly to the estate.

Oxnard Family History.

Elizabeth C. Oxnard was the second wife of Mr. Oxnard; his daughters, Florence S. and Mabel, were his children by his first wife, Maria H. P. Oxnard, who died some years prior to his marriage to his second wife.

After her father's will was made, the daughter, Mabel, married John A. Standring in Colorado on July 19, 1898, a year and some months before her father's death. Her sister, Florence, was present at her marriage and advised against it because Standring was a drinking man (p. 1160) and after the death of her father wrote respondent about it (p. 1161).

Mabel Oxnard Standring died intestate at Denver, Colorado, August 30, 1902, without leaving issue. At the time of her death she was a resident and citizen of Colorado, which was the domicile and residence of John A. Standring, her surviving husband, who was a citizen of that state, and under section 1524, Chapter 39, of the Statutes of Colorado, inherited the entire estate of his deceased wife.

Florence S. Oxnard in December, 1902, married one Beach.

Insurance.

There were four policies of life insurance in force upon the life of Mr. Oxnard at his death, as follows: Policy number 52,674, issued by the Connecticut Mutual Life Insurance Company, and Policy Number 22,645, issued by the Mutual Benefit Life Insurance Company of New Jersey; and benefit certificate number 23,606, issued by the Royal Arcanum; and benefit certificate number 4,525, issued by the National Union; all payable to Maria H. P. Oxnard, the deceased first wife of said John E. Oxnard; that on account of the death of said Maria H. P. Oxnard prior to the death of said John E. Oxnard, all of said policies of insurance and benefit certificates became payable by their terms in equal portions to the said two daughters of said John E. and Maria H. P. Oxnard. They were all assigned to George W. Radford, Trustee, in January, 1900, as appears by Exhibits B, C, D and F on pp. 797-801, and pp. 803-4, attached to respondent's bill of complaint, pp. 783-804, hereinbefore referred to (see also pp. 885-6, respondent's testimony). On April 10, 1900, the widow, Elizabeth C. Oxnard, executed a separate assignment to George W. Radford, Trustee, of "any and all interest I may have in and to Benefit Certificate No. 4525, issued by the National Union." Exhibit E, p. 802. This assignment was made, not because Elizabeth C. Oxnard had or claimed any actual interest, but to satisfy the local council of the National Union (Bill, p. 788—vide, R., 987-8).

Respondent contended that all the above insurance which

he received as aforesaid, was no part of the estate of John E. Oxnard, deceased; that he held said insurance in trust for the two daughters, to each of whom he should account for an undivided one-half thereof wholly and distinct from the estate of their father; that the only relation said insurance bore to the estate was pursuant to the terms of paragraph "Third" of his will, that it "shall be taken into consideration in making up the total of my estate for such division."

Respondent did not include any of said insurance moneys in the inventory (p. 266), of said estate filed by him September 2, 1908, to which no exceptions were filed.

By mistake, as will be hereafter shown, certain of said insurance moneys received on three of the policies, was included in respondent's final account as executor, but afterwards withdrawn from said account without any objection thereto either by the legatees or the probate court (pp. 297-8), namely:

"Feb. 15, 1900. Received from Mutual Benefit Life Insurance Company..... $2,798.86
Feb. 22, 1900. Received Royal Arcanum Insurance 3,000.00
April 20, 1900. Received from Connecticut Mutual Life Insurance Company..... 2,162.60

On May 15, 1909, after the hearing in the Probate Court on respondent's final account, the Probate Judge, Durfee, entered an order (pp. 309-10) in which he held:

> "That the insurance moneys turned over by the widow and daughters of said deceased to Mr. Radford are not part of the estate of said deceased and he is not charged with such moneys as executor."

The order of May 15, 1909, contains other provisions of vital application to the propositions suggested by this Honorable Court to be considered herein, which can be better presented and discussed in connection with the proceedings relating to the corpus of the estate proper.

Administration of Estate.

Immediately after the issuance of letters testamentary to him, respondent proceeded with the performance of his duties, in the details of which he was aided by his confidential assistant, Mr. George C. Morse, a lawyer older than respondent and of ripe experience in such matters and of unquestioned integrity. Mr. Morse kept a special book relating to the Oxnard Estate, and attended to some personal matters for the widow, Elizabeth C. Oxnard. He drew, and acted as notary in relation to, many of the papers appearing in the record and relating to nearly all the charges. Mr. Morse died about four and a half years after the Oxnard will was probated, and in the removal of his personal books and furniture from the office, the Oxnard book was in some way lost. To this loss must be attributed some of the difficulty of making up respondent's final account, as appears by the record.

The Oxnard estate was not large, approximately $20,000. It was not well invested, the larger part consisted of small investments in Maine, Indiana, Nebraksa, Illinois, Tennessee, a homestead and another small house and lot in Detroit, a small block of bank stock, and a small bank account, a number of real estate syndicate investments upon which he was laible, and one land contract upon which the liability was $12,000, the Eberding contract (pp. 837-38).

Owing to the condition of the estate and terms of the will, the only practical way of reaching and ascertainment of the actual value of the estate in order to pay to the widow her one-third, which we contend was to be paid wholly and solely out of the estate, "After the payment of all my just debts, funeral expenses and expenses of administration," (3rd clause of will), was by sale of the saleable assets and collection in of the investments. Accordingly, respondent proceeded with the performance of his duties under the will, exercising his authority to sell, but consulted the widow and daughter, Florence (pp. 840-841) and before any of the proceedings in the record were instituted paid the widow what he claimed was equivalent to

her full share of the estate, for all of which he claimed credit as executor. Respondent had paid large sums to the daughters, all of which he also claimed should be credited to him as executor. The death of Mrs. Standring had complicated the question regarding the insurance. Respondent refused to proceed to close up both the estate and the insurance fund, in any manner, ignoring the interest in the insurance fund of John A. Standring, sole heir-at-law of his wife. Standring had disappeared and could not be located after his wife's death (p. 828). Later, on p. 989, appears evidence of the displeasure of Mrs. Oxnard because respondent refused to ignore Standring's interest in the insurance. This led to the proceedings in the Probate Court.

Inventory and Account.

Pursuant to orders of the Probate Court, respondent on September 2, 1908, filed an inventory of the Oxnard Estate (pp. 266-68), also an account of his receipts and disbursements therein (pp. 269-289). On October 20, 1908, respondent withdrew from said account the three items of the life insurance erroneously included therein, as heretofore stated (pp. 297-98). No exceptions were filed to said inventory, but on October 6, 1908, exceptions to said account were filed by Elizabeth C. Oxnard, and on October 8, 1908, by Florence S. Beach (pp. 289-95), and on October 16, 1908, Elizabeth C. Oxnard filed additional exceptions, in both of which appear claims that the entire *insurance* should be accounted for by respondent as a part of the corpus of the Estate, and that respondent should account to her for *one-half* of the total of the Estate and insurance combined.

Respondent's Bill in Chancery.

Because of the assertions set forth in the exceptions, respondent on October 31, 1908, filed his bill in chancery against all the legatees named in the Oxnard will and John A. Standring, widower of Mabel O. Standring, deceased, for the purpose of obtaining a construction of the will, determining the respondent's liability under the insurance "trust," and an accounting between the legatees, Standring and respondent, as to both the estate and insurance funds. Especial attention is called to the bill (pp. 783-95).

On December 15, 1908, defendant Elizabeth C. Oxnard filed her first plea to the bill (p. 805). This was a *sworn plea*, filed over a week before the hearings were commenced in the Probate Court on the executor's account, and therefore was the first statement in detail of the widow's claims regarding the life insurance, upon which she based her entire defense to said bill. The following are quotations of the principal part of the plea:

> "That long prior to the exhibiting of his said bill of complaint by complainant, and soon after the death of John E. Oxnard as therein set forth, all persons, viz.: this defendant, defendant Beach, and her sister Mabel Standring, primarily interested in said will, estate and insurance of John E. Oxnard, deceased, in said bill of complaint mentioned, there being no debts against said estate to interfere with their acting in that behalf, without prejudice or injury to any rights or interests under said will of George A. Oxnard, Horace C. Oxnard and Mary E. Staples, mentioned in said bill of complaint, *agreed among themselves as to the distribution of said estate and insurance under the provisions of said will.*"
>
> "That their said agreement and understanding as to such distribution have never, to the knowledge, information and belief of this defendant, until the exhibiting of said bill of complaint been disputed or questioned by any person in any manner interested in said will, estate or insurance, nor by any person whatsoever, and that said complainant, well knowing and understanding their said agreement, has, from his qualifying as executor of said estate, acted in harmony and consonance therewith until ordered to make and file an account of his administration of said estate to the Probate Court for said County; and that the matter of accounting to said Probate Court by said complainant, as executor under the will of said John E. Oxnard, deceased, for the goods, chattels, property and proceeds of and belonging to said estate, and every other matter and thing mentioned in said bill of complaint pertinent or material to the administration of said estate under said will, were,

> at the time of exhibiting his said bill by complainant, and now are, pending in said Probate Court, unheard, undetermined, and not ended or dismissed."

It is to be noted from the above plea: (a) that the alleged agreement as to the insurance between the legatees is not asserted to have been in writing; (b) that respondent was in no way a party to it; (c) that it makes no reference to the assignments of the insurance set forth as exhibits to complainant's bill or to any possible rights of John A. Standring.

Therefore, it follows that the plea is a complete refutation of all the testimony subsequently given by the widow and Mrs. Beach when called by the friends of the court in rebuttal as to respondent's connection with the making of the said assignments.

On May 12, 1909, the defendant, Florence S. Beach, filed two pleas and a demurrer to respondent's bill of complaint.

The first plea (pp. 811-12), is based upon the claim that complainant had no right to ask of the Circuit Court a construction of said will or the determination of the interests in said Estate, because complainant had been removed from his office as executor of said will on August 25, 1908.

The second plea (pp. 907-08) was based upon the claim that on October 2, 1908 complainant had filed his account in the Probate Court as executor and that said account had been heard in the Probate Court and was then undetermined.

The demurrer of Mrs. Beach (p. 813) was based upon the claim that

> "said bill contains no matter showing the creation or existence of any trust in the insurance moneys in said bill referred to, or any matter from which the Court can determine either that any trust in such insurance moneys exists, or the terms and conditions of any such trust."

This demurrer therefore negatives the plea of the widow as to the agreement among themselves as to the distribution of said estate and insurance under the provisions of said will, and therefore clearly left the disposition of the insurance in the jurisdiction of the Court of Chancery.

On January 13, 1910 the defendant, Elizabeth C. Oxnard, filed a second plea puis darrein that the order of the Probate Court of May 15, 1909, ordering payment, was a final decree of the Probate Court and a bar to further prosecution of the bill of complaint. This plea (pp. 814-17) was filed by leave of Court.

On January 29, 1910, the several pleas and demurrer were brought on for hearing before Judge Hosmer, when the following order was made (pp. 809-10): (a) the pleas were allowed (b) complainant was granted ten days after notice of the entry of the order to take issue upon said pleas, and in default of "*taking issue on such pleas said bill of complaint be dismissed in so far as it seeks a construction of the will of John E. Oxnard, deceased and the determination of the interests of the different persons interested in said estate*" (c) that complainant had leave to amend that portion of said bill of complaint covered by the demurrer.

Within the time allowed, complainant did take issue on the pleas (p. 818). He also amended the bill of complaint (pp. 820-21 by adding: paragraph (15½) relating to the assignments and "trust" concerning the insurance; and a new paragraph (17) impleading the Union Trust Company as administrator of the Estate of Mabel O. Standring, party defendant or that it be allowed to intervene as such administrator; said Union Trust Company having been appointed such administrator on June 30, 1909 by the Probate Court for the County of Wayne (p. 820). The Probate Court files show that two petitions were filed for appointment of administrator of Mabel O. Standring's estate, one by Florence O. Beach for the appointment of Bryant Walker, one of her counsel, alleging an estate of $3,000, personal property, and one by John A. Standring for the appointment of the Union Trust Company.

It therefore appears from the foregoing that the chancery case was pending against all the parties interested in the estate and insurance duly impleaded undetermined upon all the issues set forth in the bill, pleas and demurrer when the disbarment proceeding was heard in the Circuit Court for the County of Wayne.

It also appears by the record that the Probate Court was at all times duly advised of the pendency of the chancery case.

It will further be observed that:

Although the Probate Court had heard respondent's account as executor and had on May 15, 1909, ordered respondent to pay over the balances found by said order in his hands to the widow and trustee to be thereafter appointed by the Probate Court to take charge of the fund found for the surviving daughter, Florence S. Beach; and on July 14, 1909 had ordered that said fund be paid by respondent to the Security Trust Company, appointed by that Court trustee under the will of John E. Oxnard (Exhibit 2, p. 132), and

Although the hearing on respondent's account was conducted without any legal representative of the Estate of Mabel O. Standring or her heir-at-law, John A. Standring, being represented, and

Although the Probate order provided that the insurance moneys were no part of the Estate of John E. Oxnard. Yet notwithstanding all the above facts the said order absorbed the entire of said insurance moneys into the Estate and attempted to compel payment of said insurance moneys contrary to the face of the order itself.

And:

Although on June 30, 1909, the Union Trust Company of Detroit was duly appointed by and qualified in the same Probate Court for the County of Wayne as administrator of the Estate of Mabel O. Standring.

Yet notwithstanding this appointment the same court, on July 14, 1909, ordered that the portion of the Estate and

insurance designated as the trust fund for Mrs. Beach, in which Mrs. Standring's insurance was absorbed, be paid to the Security Trust Company; and the Union Trust Company, administrator, did not intervene or appear in the Probate Court in opposition thereto.

And:

Although the friends of the court, Wilkins and Casgrain, were appointed on June 4, 1909, and June 11, 1909, respectively, and according to their account (pp.730-4) spent the whole time from June 4 to Sept. 4, 1909, in examination of papers, files and records, interviewing attorneys, court officials and prospective witnesses, securing of evidence and preparation of charges, etc.; and based the principal charges in the Oxnard matter upon the alleged disobedience of the "lawful orders" of the said Probate Court, especially the orders of May 15, 1909, and July 14, 1909.

Yet no mention is made in said charges of the pendency of said suit in chancery, or of the appointment of an administrator of the estate of Mabel O. Standring, deceased.

And:

Although in his answer to said charges (pp. 186-7), respondent called attention to said chancery cause and the knowledge thereof by the Probate Court before the entry of the orders of May 15 and July 14, 1909.

Yet the friends of the court ignored that proceeding altogether and claimed that because respondent had not appealed from said orders he was technically bound thereby, whereas respondent contended then and contends here that for the purposes of the disbarment proceeding he had the right to show the want of jurisdiction of said Probate Court and the invalidity of said probate proceeding and orders regarding the amount of the Estate of John E. Oxnard for which he should account, and if those orders were not lawful, no matter whether he had appealed or not, disbarment could not be had for that cause. This principle of law is too firmly established to require the citation of authorities

Probate Order, May 15, 1909.

We now propose to examine and analyze the Probate order of May 15, 1909, in detail, as to its disposition of the *insurance* and estate, computation and payment (pp. 130-131).

The Court held (p. 130):

> "(a) That the insurance moneys turned over by the widow and daughters of said deceased to Mr. Radford are not part of the estate of said deceased and he is not charged with such moneys as executor."

The above was correct, except that the widow was not entitled to any part of the insurance as a matter of right or law, and did not "turn over" any part of it to Mr. Radford. Her assignment of the National Union policy was not made because of any actual interest therein but for the purpose set forth in paragraph 8 of complainant's bill (pp. 786-8).

The order further provides (p. 130):

> "(b) The Court finds that he held such insurance moneys as trustee or agent and checked out moneys to the widow and daughters as trustee, and the disbursements to them for which he asks credit in his account will be charged against such insurance funds turned over to him by them respectively *until such funds are exhausted, and not against their shares of the estate of John E. Oxnard, deceased.*"

The evidence showed that respondent kept a bank account as trustee, in which account he deposited general trust funds including both the Oxnard estate and Oxnard insurance funds as well as other trust funds, and when he checked out moneys to the widow and daughters of Mr. Oxnard, as trustee, he did not draw those checks against the insurance fund, as the Probate Court held. That court had no right or power to charge those checks against the

insurance until that fund was exhausted, for the following reasons:

(1) Under the will the widow was to be paid out of the *Estate* funds only; and by her exceptions she admits she received nearly $13,000 out of the estate from the executor.

(2) The daughters were to receive the income from their shares of the estate for their support and maintenance with discretionary authority to the executor, if such income should not be sufficient at any time, to use any part or all of the principal of the daughters' shares of the estate for that purpose:

(3) The insurance fund was entirely a separate matter between the daughters and respondent; it was no part of the estate, as the Probate Court correctly held; and therefore, that court had no power over it, could not divert it to the widow, or change the executor's report and his liability as executor in any such way as was done;

(4) The only consideration the Probate Court could give to the insurance moneys was to make up the total of the two funds for the determination of the respective shares of the widow and daughters in *the estate* for division:

(5) The insurance policies and certificates on their face determined to whom they were payable, and the Probate Court had no concern with and no power to construe their provisions as affected by the death of the original beneficiary, Maria H. P. Oxnard, and the rules of fraternal societies issuing them.

We assert that a mere reading of the will is of itself a complete and convincing argument, fully sustaining the foregoing points.

The order further provides (p. 131):

"(c) The Court finds that Mabel Oxnard Standring did not receive any part of the estate of said

deceased from the executor and that under the will her part of said estate reverted to the widow and other daughter upon her death. No account is taken in this computation of either receipts or disbursements as regards said deceased daughter."

Here again the Court was in error for the same reasons given under (b) above, and the additional manifest reason that the probate court had no arbitrary power to change the executor's report and nullify it by holding that he paid no moneys out of the estate to Mabel O. Standring. He did pay, and so reported, moneys out of the estate to her and made disbursements such as medical attendance, and funeral expenses out of her share of her father's estate; and the Probate Court had no power to change the executor's report in that respect in order to increase the share of the widow in her husband's estate. It is obvious that as the will took effect at the death of the testator, the "estate" devised must be determined as of that date, and if the daughters' share of the estate is not to be reduced by payments made to her for her support, then her own individual estate was diverted to the widow by the arbitrary ruling of the Probate Court pointed out above. It was the intention of the testator, as expressed in the fifth and sixth clauses of his will, that the daughters should be maintained out of his estate, so long as their shares lasted, without drawing upon their insurance money, and that the widow should take only one-half of the residue of the share of the daughter first dying without issue.

The order further provides (p. 131):

> "(d) The Court finds that Florence Oxnard Beach did not receive, according to the account, so much as she turned over to Mr. Radford of the insurance monies, therefore no account is made of either receipts or disbursements as regards this fund."

Here again the court made the same error. Although the meaning of the decretal order is ambiguous, the evident purpose was to disallow any credit to the executor for moneys paid out of the estate to Mrs. Beach, and the effect was

to exhaust her own property—the insurance fund—to the benefit of the widow. The court had no such power.

The outcome of the whole order was that Mrs. Beach was finally left without any money of her own which she could use as she pleased, and with her insurance money absorbed into a trust fund held by the Security Trust Company, a result completely contrary to the father's will. It was, to say the least, an arbitrary and unwarranted judicial wrong, not only upon her rights, but it had another two-fold object: (1) to hold respondent responsible as executor for a larger amount than he ever received from the estate, and upon his failure to pay to make such failure—which we shall show would not be justified—the basis for the charge of embezzlement, as was actually done, or to compel him to furnish a prohibitive bond in order to appeal. The latter point will be given special attention later; and (2) to wipe out any and all rights of the despised widower and sole heir-at-law of Mabel O. Standring, deceased, John A. Standring, whose rights were revealed in respondent's bill in chancery, and who was thereby given an opportunity for his "day in court."

The order further provides (p. 131):

> "(e) The Court finds that the will does not provide that the insurance moneys collected by the widow, $666.66, and turned over to Mr. Radford, was to be considered in the distribution of the estate of said deceased, and she is not charged with the receipts by her covering this amount."

Here again was an arbitrary ruling that the widow was entitled to $666.66 of the insurance moneys, and that the will did not provide that the *widow's insurance moneys were to be considered* in the distribution of the Estate, and therefore "she is not charged with the receipts by her covering this amount." This meant that $666.66 was actually paid to the widow by the executor out of the estate as shown by her exceptions to the executor's report, and the executor was denied credit therefor.

But the will reads—last clause, paragraph third:

> "And I direct that in making such division, *all insurance upon my life, wether payable to my Estate* or to my said daughters, shall be taken into consideration in making up the total of my estate for such division."

Further comment is not necessary to demonstrate that the above arbitrary ruling of the Court was erroneous.

The order further provides (p. 131):

> "(f) The Court finds that the amount of such funds, collected by Florence Oxnard Beach, $4,647.40, is to be considered in the distribution of the estate."

The amount, $4,647.40, evidently was obtained by deducting the $666.66 which the court held belonged to the widow from the total insurance, $9,961.46, and taking one-half of the remainder. This ruling was again arbitrary and directly against the provision of the will, and against the rights of Florence O. Beach, as it is self-evident that if less than half of the *insurance* was taken into consideration her share of the total of the estate and insurance would be greatly decreased. In any view that may be taken, the Probate Court failed to determine the division he attempted to make on the basis of the conditions existing at the death of the testator.

The order further provides (p. 131):

> "(g) The Court finds that the cash balance due from said executor at this date, including interest, is the sum of twenty-one thousand and six hundred eleven dollars and thirty-four cents ($21,611.34), of which the sum of fifty-five hundred thirty-seven dollars and sixteen cents ($5,537.16) is due Elizabeth R. Oxnard, and said executor is hereby ordered to pay over said sum to her forthwith.
>
> (h) The Court finds that the cash balance due the fund provided in said will for the benefit of said Florence Oxnard Beach is the sum of fifteen thousand

nine hundred four dollars and nineteen cents ($15,-904.19), to be hereafter assigned to the trustee to be appointed by this court."

As no argument was permitted by the Probate Court as to the method of computation, or upon the settlement of the terms of the arbitrary order of May 15, 1909, and as the executor's account as finally corrected showed the total receipts in the Oxnard estate from August 26, 1908, including income, were $25,942.28, and the total disbursements $20,-525.71, leaving a balance of $5,416.57 (p. 176) it became a matter of deep interest as to how the "cash balance" of $21.611.34 "due from the executor" was arrived at by the Probate Court. Of course, the unwarranted manipulation and absorption of the insurance would account for a large part, but by no means all the increase. Accordingly, in order to solve the problem as far as possible, upon the hearing of the disbarment proceedings, respondent called as his witness the then Probate Judge, Henry S. Hulbert, but formerly Register of Probate; his testimony will be found in full on pp. 998-1003, and shows that Judge Hulbert as Register of Probate made the computation for and at the direction of Judge Durfee.

DIRECT EXAMINATION.

By Mr. Weadock:

"Q. Will you please tell us just what you did and how you arrived at that amount?

Objected to by the friends of the court as immaterial and incompetent because the judgments are conclusive.

A. I took all the account, first, each item of receipts, and computed interest at 7 per cent (the legal rate in Michigan is 5%), compounding it from the date that he received the money to the time 'we held the accounting;' I did the same with the disbursements, for which credit was given; all disbursements as part of the estate for moneys advanced Mrs. Oxnard, Mrs. Beach and her sister (Mrs. Standring) were charged against the insurance

moneys; I 'computed on the inventory of the assets, that we charged him with afterwards in his account.'"

CROSS-EXAMINATION.

By Mr. Fitzpatrick:

"Q. You testified on direct examination that the insurance fund was first absorbed, that is to say, that payments were made by Radford to the widow and the two girls and were charged against the insurance company before he was given any credit for disbursements out of the estate's fund?

A. Mr. Radford, in his hearing, testified that certain funds had been received by him as trustee. They were charged to him as executor. I think he claimed that they were due him as trustee, chargeable to him; we offset to that certain items which he had in his account as having been paid to the widow, we charged as having been paid from the trustee's account, and not paid by him as executor.

Q. Will you be able to give any items that appear in his account, as executor, as credits to him, that were used in that way?

A. The trust fund insurance—trust fund.

Q. The trust fund?

A. I think so.

Q. That will determine whether there was a distinction made between the widow and the girls?

A. Yes.

Q. My impression is that the daughters were the beneficiaries named under the insurance policies—did you charge the widows and daughters equally with the proceeds of the policies—your examination will determine that?

A. Yes, I had the original statement showing how I made the computation. That I do not find. It is not amongst these papers or figures. If I had it here I would be able to testify. I think it is among my papers, but has become detached from the others.

Q. Do you recollect what the statutory fees for Mr. Radford amounted to?

A. $498.40.

Q. Those are the statutory fees as allowed?
A. Yes.
Q. Do you know why Judge Durfee refused to allow the executor credit for any investments that he claims to have made?
A. I do not.
Q. Do you know of the fact that he did refuse to allow credit for them?
A. I think he did not pass upon the quality of the investments at all.
Q. Were the investments considered in the account?
A. I do not think so. I think the account was taken on the inventory and receipts which he charged himself with.
Q. Why was interest compounded?
A. As a penalty.
Q. For what?
A. For failure to file an account for the estate.
Q. Under whose direction was it done?
A. Judge Durfee's."

This, to say the least, was a remarkable revelation of judicial disregard of the rights of the respondent, of Mrs. Beach and of John A. Standring, whatever his rights may have been.

The Probate Court, as we have already shown, is wholly a statutory court and could only deal with the estate; it had no power whatever to juggle with the insurance, which it held was no part of the estate, in any such manner. The charging of the payments of estate moneys by the executor to the widow and daughters against the insurance moneys until that fund was exhausted, which *ipso facto, et eo instanti* absorbed into the estate Mrs. Beach's portion of the insurance, and converted it from a fund belonging to her as her own separate estate to dispose of as she saw fit to a trust fund pursuant to the terms of the will, was wholly unwarranted by any law of Michigan. Nor was it her father's intention. He did not intend in the making of his will to deprive her of the full use and enjoyment of the insurance. The trust fund he created by his will for his

daughters' shares of his estate was for their protection and maintenance, with most liberal authority to use any part or all of the principal for that purpose. That authority was granted to the respondent.

It may be said that respondent is not concerned as to the effect of the Probate order upon the rights of either Mrs. Oxnard, Mrs. Beach or Mr. Standring, that his duty would be performed by payment of the amount found due by the Probate Court. We cannot agree with this, it was his duty to protect Mrs. Beach as far as possible, as it was evident that Mrs. Beach did not understand the betrayal of her rights. His bill in chancery was justified on that ground alone.

But respondent's rights were vitally affected by what was done. Unfortunately, we did not obtain the computation of Judge Hulbert, but we submit, it is evident from his testimony that the 7% compound interest extended to the insurance moneys as well as to the receipts from the estate. And in that method the amount of $21,611.34 was obtained, which the charges say the respondent, by not appealing and not paying, misappropriated and embezzled. Judge Hulbert also testified that the 7% compound interest was imposed as a penalty for failure to file an account for the Estate, as also was the disallowance of all compensation to the respondent for extraordinary services as set forth in the schedule thereof (p. 308), but we submit that there is no law of Michigan which permits the imposition of any such penalty or penalties for the failure or neglect to file an account, in the absence of any other findings or complaint by the Probate Court.

It must therefore be conclusive that the penalty was imposed by the Probate Court as sufficient punishment for the grievances alleged to have been committed by the respondent in that Court; therefore, when the friends of the court insisted that the Probate Court order was conclusive as to amount and it appeared by the evidence of Judge Hulbert that the account was corrected and accepted by the Court in the manner he described, that we submit disposed

of all the other charges regarding the account. The corrections having been made at the direction of the court and in acceptance of the account by the court without other criticism or action than the penalty, was just as binding on the friends of the court as was the order as to the amount. In other words, if the proceedings in the Probate Court were conclusive as to the respondent they were equally so as to the friends of the court and should dispose of all other charges regarding that account.

Executor's Account, How Made and Corrected.

But independent of the above reasoning, we propose to take up the other charges regarding the account for the purpose of showing their lack of force and effect within the lines of the propositions suggested by this Honorable Court for the intrinsic examination of the State record.

We submit that the record shows that the delays in making the executor's report after the orders of the Court requiring report, were unavoidable and caused by respondent's illness, which made it necessary for respondent's assistant, Mr. Samuel P. Bradley, to prepare the report. The difficulties under which he labored, and how the mistakes occurred and were corrected, are fully shown by the affidavit of Mr. Bradley, Exhibit 2 (pp. 215-18) to respondent's answer to the disbarment charges, which covers the ground in a brief way. A more complete, detailed description will be found in his testimony (pp. 1087-1110). Briefly summarized the facts concerning the prepartion of the account are as follows: Respondent was confined to his house by serious illness during July, August and until the latter part of September, 1908. During this period the account was prepared by Mr. Bradley in the manner described in his affidavit and his testimony that during most of the time respondent was too ill to give assistance. Respondent told Mr. Bradley that the insurance moneys were no part of the Estate, but Mr. Bradley included three of the policies nevertheless "because I found out that he had the moneys from the companies;" that he, Bradley, investigated as best he could and included the different items that were excepted to; that when the account was checked over in respondent's office by Probate Judge Hulbert with the counsel for the exceptors present, respondent offered to correct

all errors that were found had been made in the account; that a list of the corrections was agreed upon and the Court after respondent had authorized him to make them, ordered them to be made upon the original account. No objection to this being done was made by the exceptors; in fact, Wetherbee, representing the widow without authority, took the account from the court room to his office, and when ordered back, stated he understood he was to take the account to his office to make the corrections; that the corrections were then made by the witness in red ink on the original account in Wetherbee's presence; that the investigation of the account began in the Probate Court on December 23, 1908, and on that day it was adjourned to January 6, 1909, and then the Probate Judge refused to hear any further inquiry into the investments made by respondent. Mr. Bradley also testified that he notified Probate Judge Durfee of the filing of respondent's bill in chancery, before the hearings of the account in Probate Court, and before the Probate Judge ruled that the insurance was no part of the Estate.

Attention is also called to the testimony of Probate Judge Hulbert (pp. 998-1003), which has already been briefly reviewed in connection with the question of the insurance, and 7% compound interest, *penalty*, but now referred to particularly with reference to the account, commencing at bottom of p. 999 and extending over pp. 1000-1001, showing that the checking of the original account was made at respondent's office with Counsel Wetherbee and Long representing the exceptors present; that it took place in three days, and receipts and checks were produced; that the corrections were all made by respondent and a number of the items referred to were allowed to stand; that Judge Hulbert made a memorandum of the items, and after the hearing they were corrected by the respondent, who stated before the checking started that he would be pleased to correct any errors that were found.

Attention is also called to paragraphs 5-10, both inclusive, pp. 177-184, R., of respondent's answer to the charges in which the specific charges relating to the account are fully met and refuted as to any intended wrongdoing a

charged; also his testimony (pp. 823-26 relating to checking, hearing and correcting the account.

None of the above testimony relating to the preparation and correction of the account is contradicted in any way.

Our conclusions as to the charges concerning the executor's account may now be very briefly and summarily stated.

The respondent was ordered to file an account of the original receipts and disbursements of the Oxnard Estate. Such an account was filed September 2, 1908 (pp. 269-89). Certain insurance moneys were withdrawn on October 20, 1908, as being no part of the Estate (pp. 297-98). Exceptions were filed to the account, which was then checked in the manner shown and corrections listed and agreed upon, and, after hearing, the Court allowed the corrections to be made, which corrections disposed of all exceptions other than the insurance. The account as corrected was submitted to the Court on February 19, 1909, together with schedule of extraordinary services of the executor. On May 15, 1909, the Court, without requiring any further account, examnied and allowed all the items of the corrected account, but reached the balance which was ordered paid over by the orders of May 15 and July 14, 1909, by manipulation of the insurance and 7% compound interest.

It is submitted that the corrected account was the only account the friends of the court had any right to consider in the disbarment matter. By their own assertion that the records and decision of the Probate Court are conclusive, they were estopped from basing charges upon the account as originally filed; further, because the Probate Court, after full hearing, made no other order or finding against respondent than delay in filing the account, for which the penalty was imposed, all other charges relating to the account must necessarily fail, under their own reasoning.

But independent of this we submit the record shows sufficient and reasonable explanation of all errors, and their correction as soon as explained. That no wrong intent

was shown, and all corrections were agreed upon, and made by respondent's authority and direction of the Court.

Jurisdiction of Probate Court.

We now submit, as hereinbefore urged, that the Probate Court had no jurisdiction to deal with the executor's report, or with the estate and insurance fund by treating the latter as a part of the estate; or to charge the payments made by the executor out of the estate to the widow and daughters, against the insurance fund until it was exhausted, as was done by the order of May 15, 1909. In short, the Probate Court was without power and jurisdiction to make the order of May 15, 1909.

Constitution of 1850, Art. VI., Sec 13:

"In each of the counties organized for judicial purposes there shall be a court of probate. The judge of such court shall be elected by the electors of the county in which they reside and shall hold his office for four years and until his successor is elected and qualified. *The jurisdiction, powers and duties of such court shall be prescribed by law.*"

Constitution of 1908, Art. VII, Sec. 13:

> "In each county organized for judicial purposes there shall be a probate court. *The jurisdiction, powers and duties of such courts and of the judges thereof shall be prescribed by laws,* and they shall also have original jurisdiction in all cases of juvenile delinquents and dependents."

It will be seen that no change was made from Art. VI., Sec. 13 of the Constitution of 1850 except for the purpose of improving the phraseology, and the addition to the powers before conferred by law on probate courts in juvenile cases.

In Detroit L. & N. R. Co. v. Livingston Probate Judge, 63 Mich., 676, mandamus to set aside void probate order, in granting the writ, the Supreme Court held, pp. 680-81:

> "The nature of probate courts was discussed in Ferris v. Higley, 20 Wall., 375, where it was held beyond the power of the legislature of Utah to give them common law and equity jurisdiction. They have existed in Michigan since its complete territorial organization, and their character has never been doubtful. They have always been regarded as courts for *peculiar and limited purposes*, which are *outside of ordinary litigation, and incapable of dealing completely* with *ordinary rights.*"

In Grandy v. Hughes, 64 Mich., 540, p. 545, the Supreme Court held:

> "The probate court *derives none of its jurisdiction or power from the common law,* but must find the *warrant for all its doings* in the statute. Its *jurisdiction, powers* and *duties* are *prescribed by law.*"

In Shulte v. Fletcher, 111 Mich. 84, which was a case where on petition of an heir for the appointment of an administrator, his co-heirs opposed the appointment on the ground that the estate had been fully settled by written agreement between the heirs, the Court held, p. 99:

> "The probate court would not have power to decree a specific performance of the agreement made by the parties, if it was a valid one, and they refused to carry it out; neither would it have the power to set aside the agreement and cancel it, if it was invalid. See Perkins v. Oliver, 110 Mich. 402; Bush v. Merriman, 87 Mich., 250."

This has close application to the alleged insurance fund agreement set up in the plea of Mrs. Oxnard to respondent's bill in chancery.

In Dudley v. Gates, 124 Mich., 440, p. 441, it was held:

> "Courts of probate have only such jurisdiction as is conferred by statute. Const., Art. 6, Sec. 13. *They are not empowered to construe wills when presented for probate.*"

The above decisions cover all the questions hereinbefore raised as to the jurisdiction of the probate court, and demonstrate that the order of May 15, 1909, was void and not binding upon respondent as executor of said estate; and *ipso facto,* that he had the right in the disbarment proceedings, to show the lack of jurisdiction and power of the probate court to make the said order; that the amount was incorrect for the reasons shown; that he was right, under the circumstances, in not paying the sum found due therein; and that he was under no obligation to contest its validity by appeal; as his rights were fully protected by the chancery case; and that, for all those reasons, the order could not be made the basis for disbarment charges.

We understand the order of this Honorable Court, in permitting the intrinsic examination of the state record upon the propositions stated, was made in recognition of the principle above stated, which is both right and just.

We cite one disbarment case in point:

In People ex rel. Colorado Bar Ass'n. v. Burton, 86 Pac. (Colo.), 1063, it was held that an attorney, sought to be disbarred because convicted of grand larcency, may show *that he did not have a fair trial and is innocent.*

III.

"That some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us."

The record shows that the writ of certiorari in this matter was issued out of the Supreme Court on October 4th, 1910, and required the circuit court judges to certify the records and proceedings and have them at the Supreme Court room in Lansing on November 12, 1910 (p. 24). The return of the writ was not made by the judges until March 11, 1911, from which date it was pending in the Supreme Court of Michigan until final decision thereof.

The official report of the case, 168 Mich., 474, shows that the case was argued and submitted January 31, 1912, and that it was decided February 10, 1912. On p. 490 of the official report of the opinion occurs the following, referring to the probate order of May 15, 1909:

> *"From this record it appears that respondent has not paid over any of said sums. He has not appealed from said orders, or either of them."*

In view of the above expression of Mr. Justice Stone, we deem it our right to make the following explanatory statement of the facts bearing on the question of payment.

Paragraph 11, pp. 7-8, of respondent's answer to the order to show cause, issued by this Honorable Court in this matter, shows that on October 21, 1911, over three months before the disbarment case was heard by the Supreme Court of Michigan, respondent's indebtedness to the Oxnard estate as executor was fully settled and paid by him, and on November 18, 1912, he was fully discharged as executor of said estate and his bond as such was cancelled by said probate Court.

The friends of the Court filed two briefs in the Supreme Court on the disbarment case; one, a joint brief, was filed on January 20, 1912. In that brief, they say, on p. 86:

> *"The all important matter is that he has not paid over all or any part of these moneys and cannot do so, and no good excuse or reason for failure or inability is made to appear."*

Mr. C. A. Kent's separate brief was written December 21, 1911, as appears on p. 9, paragraph 8 thereof, in which he states, (top of p. 4):

> *"He has not paid the sum in question or any part of it."*

Counsel for respondent on the oral argument on January 31, 1912, referred to the above statements of non-payment contained in the briefs of the Friends of the Court, and

stated to the Court that both of the Friends of the Court knew before they wrote their briefs that respondent had paid the Oxnard estate the amount agreed upon in settlement. One of the justices thereupon stated that that fact was outside the record, to which respondent's counsel replied, that the charge in the brief of the Friends of the Court was also outside the record, but nevertheless the payment had been made and they had full knowledge thereof.

The fact of the payment on October 21, 1911, of course could not have appeared in the printed record, which was filed in the Supreme Court some considerable time before the payment was made. Whether the learned Justice, by the quotation given, eliminated the fact of settlement from consideration because it did not appear in the record, we cannot say, but it is evident therefrom that the learned Justice, when he wrote the opinion, must have forgotten the episode that had occurred during oral argument about the fact that settlement had been made. It would seem to us that in view of the contention in the briefs of the Friends of the Court that nothing had been paid, it was proper that respondent's counsel should correct the statement and advise the Court of the contrary fact. We also venture to suggest that right and justice, under all the circumstances of the case, should have impelled the Supreme Court of Michigan to give some consideration to that fact before affirming an order of disbarment *"forever;"* and because of our earnest conviction upon that subject we desire to call the attention of this honorable Court to what does appear in the record upon the subject of settlement, namely, respondent's undisputed testimony on pp. 984-5.

The learned Justice Stone evidently was impressed with the fact that respondent had not appealed from said orders, or either of them. We venture to suggest that had the learned Justice taken into consideration the full scope of the order of May 15, 1909, the provisions of the Oxnard will, the relation of the life insurance fund thereto and disposition thereof in said order; and had he given like consideration to the issues pending in respondent's bill in chancery, it no doubt would have occurred to him that the

pendency of respondent's bill in chancery upon the issues set forth, until final determination thereof by the chancery court on the merits, was equally as efficacious under the circumstances to destroy the force and effect of the probate order as would have been an appeal from said order. The chancery proceedings were entirely ignored by the state courts; but evidently they were not ignored by the widow, Elizabeth C. Oxnard, or by the daughter, Florence S. Beach. The widow, by sending her counsel seeking compromise, as shown by the undisputed testimony of respondent (pp. 984-5, R.). The daughter, Florence S. Beach, evidently was somewhat influenced by respondent's contentions, otherwise she would scarcely have applied to the probate court to secure the appointment of an administrator of her sister's estate after the entry of the order of May 15, 1909, which estate, and her own insurance fund, was thereby completely absorbed into her father's estate.

Conclusion.

In conclusion, we wish, in behalf of respondent, to thank this honorable Court for this opportunity to present this brief, covering the record in the manner proposed in the opinion of Mr. Chief Justice White. We sincerely hope that it will aid the Court in the performance of the duty voluntarily imposed upon itself, in furtherance of justice to our client.

We respectfully submit that the record, when so examined, shows that the respondent was not guilty of any wrong intent or moral turpitude in relation to the matters charged; that he was not given a full and fair hearing or opportunity to be heard; that the proofs did not warrant the facts found by the state courts; and that grave reasons existed, which, under the principles of right and justice, should lead this Court to decline to be bound by the state Court's action.

Thomas A. E. Weadock

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Harrison Geer

Of Counsel.